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Consolidated Laws of New York Annotated

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THE CONSOLIDATED LAWS OF NEW YORK
ANNOTATED

The books of this edition are arranged and numbered as follows:

1. Report of Consolidators and Treatise on Statutes and Statutory Construction
2. Constitution of New York Annotated, Constitution of the United States, Declaration of Independence and Magna Charta
3. Agricultural (*Repealed*)
— Agriculture and Markets (*See Farms and Markets*)
3a. Arbitration
4. Banking
5. Benevolent Orders
6. Business Corporations
7. Canal
7a. City Home Rule
7a. City Local Option (*Repealed*)
8. Civil Rights
9. Civil Service
9a. Condemnation
10. Conservation
10a. Co-operative Corporations
11. County
12. Debtor and Creditor
13. Decedent Estate
14. Domestic Relations
15. Drainage (*Repealed*)
16. Education
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18. Executive
18a. Farms and Markets (*Now Agriculture and Markets*)
— General Associations (*See Joint-Stock Association*)
19. General Business
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26. Insanity (*Now Mental Hygiene*)
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28. Joint-Stock Association (*Now General Associations*)
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36. Navigation
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38. Partnership
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43. Public Buildings
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THE CONSOLIDATED LAWS OF NEW YORK, ANNOTATED

AS AMENDED TO THE CLOSE OF THE REGULAR SESSION OF THE LEGISLATURE OF 1916

Compiled under the Editorial Supervision of
WILLIAM M. McKINNEY

BOOK 35
Military Law

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Northport, New York
1917

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JUL 30 1929

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STATE OF NEW YORK
OFFICE OF THE SECRETARY OF STATE } *ss:*

In pursuance of the authority vested in me, by section 932 of the Code of Civil Procedure, I, Francis M. Hugo, Secretary of State, hereby certify that the copies of the laws contained in this volume are correct transcripts of the text of the original laws, and in accordance with such section are entitled to be read in evidence.

Given under my hand and the seal of office of the Secretary of State, at the Capitol in the City of Albany, this 5th day of July, 1916.

[L. S.] FRANCIS M. HUGO,
Secretary of State.

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The annotations in this book close with the cases reported in the following volumes:

218 New York
172 Appellate Division
95 Miscellaneous
160 New York Supplement

The Supplement will cover decisions from these points.

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CONSOLIDATORS' NOTE ON THE MILITARY LAW

General Note

The Military Law is the Military Code of 1898 as amended to date. But one live independent general statute relating to the subject was found, and the Military Law, with its schedule of repeals, cleans from the Session Laws all statutory provisions relating to military subjects. The name Military Law was adopted in place of Military Code to make it uniform with the other consolidated laws.

The report of the Board of Statutory Consolidation is dated June 26, 1907, and the Consolidated Laws were enacted in 1909. In 1908, by chapter 231 of the laws of that year, the Military Code of 1898, which was the basis of the Military Law as reported by the Board of Statutory Consolidation in 1907, was superseded and repealed. Laws 1908, ch. 231, being the most recent statute on the subject was made the basis of the Military Law as reported to the legislature of 1909 by the Board of Statutory Consolidation.

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MILITARY LAW

S 1909, CHAP. 41

AN ACT in relation to the militia, constituting chapter thirty-six of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed by a two-thirds vote.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

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MILITARY LAW

CHAPTER 36 OF THE CONSOLIDATED LAWS

Article 1. The militia of the state (§§ 1–22).
1-a. Military and disciplinary training (§§ 26–29-d).
2. The national guard of the state (§§ 30–41).
3. The naval militia of the state (§§ 50–59).
4. Commissioned officers of the national guard and naval militia (§§ 70–85).
5. Enlisted men of the national guard and naval militia (§§ 95–104).
6. Service of the national guard and naval militia (§§ 110–121).
7. Military courts (§§ 130–158).
8. Arms, uniforms and equipments for the national guard and naval militia (§§ 165–171).
9. Armories (§§ 175–198).
10. Pay and allowances (§§ 210–226).
11. Privileges, prohibitions and penalties (§§ 235–246).
12. Miscellaneous provisions (§§ 250–260).

ARTICLE 1

The Militia of the State

Section 1. Persons subject to militia duty; exemptions.
2. Enrollment.
3. Notice of enrollment; exemption claims.
4. Examination of assessment-rolls and poll-lists.
5. Designation and division of the militia.
6. Commander-in-chief.
7. Staff of the governor.
8. Power of the governor in case of invasion.
9. Drafts or volunteers from the militia.
9-a. Drafts or volunteers from the reserve militia into the national guard and naval militia.
10. Punishment for failure to appear.
11. Organization of reserve militia when ordered out.

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Section 12. Proclamation of state of insurrection.
13. When articles of war of the United States to be in force.
14. Relief from civil and criminal liability; security for costs.
15. Militia council.
16. The adjutant-general of the state.
17. Contingent fund.
18. The adjutant-general of the state, his pay, assistants and employees.
19. Bureau of records of the war of the rebellion; completion and preservation of the records and relics; free inspection of the same and quarters in the capitol.
20. Armory commissions.
21. Legal adviser of the commander-in-chief.
22. Audit and payment of accounts.

Section 1. Persons subject to militia duty; exemptions. All able-bodied male citizens, between the ages of eighteen and forty-five years, who are residents of this state, shall constitute the militia, subject to the following exemptions:

1. Persons exempted by the laws of the United States.

2. Persons exempted by the laws of this state.

3. All persons in the army, navy or volunteer forces of the United States, or who have been honorably discharged therefrom.

4. The members of any regularly organized fire or police department in any city, village or town, and exempt firemen who have served their full term in any fire company, but no member of the active militia shall be relieved from duty therein because of his joining any such fire company or department.

5. All persons who have served five years in the active militia of this state, and have received a full and honorable discharge.

6. Justices and clerks of courts of record; registers of deeds; sheriffs; ministers of the gospel; practicing physicians; superintendents, officers and assistants of hospitals, prisons and jails; light-house keepers; conductors and engineers of railways; seamen actually employed as such.

7. Idiots, lunatics, paupers, vagabonds, habitual drunkards and persons convicted of infamous crimes.

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All such exempted persons, except those enumerated in subdivision seven, shall be liable to military duty in case of war, insurrection, invasion or imminent danger thereof.

This section was derived from the Military Law of 1908, § 1.

Name of chapter: see infra, § 259. *What constitutes state militia and organization and maintenance thereof:* see CONSTITUTION, art. XI, §§ 1, 3. *Right to keep and bear arms:* see CIVIL RIGHTS LAW, § 4. *Military service by citizens:* see CIVIL RIGHTS LAW, § 5. *Failure to respond to military duty:* see PENAL LAW, § 1487. *Exemption of military officers from jury duty:* see JUDICIARY LAW, §§ 546, 635, 720. *Members of active militia:* see infra, § 238. *Persons having conscientious scruples against bearing arms:* see CIVIL RIGHTS LAW, § 6. *Firemen and policemen in second class cities:* see SECOND CLASS CITIES LAW, § 139. *Canal officers:* see CANAL LAW, § 41. *Relief from civil or criminal liability:* see infra, § 14.

Power of legislative committee to investigate military affairs: see Ann. Cas. 1916B 1060 note. *Effect of partial invalidity of statute relating to militia:* see Ann. Cas. 1916D 70 note. *Right conferred by statutory exemption of fireman from jury or militia duty:* see 8 L. R. A. (N. S.) 498 note.

Military Code.— Formerly the Military Code was the law by which the militia of this state was managed and controlled by the legislature. Op. Atty.-Gen. (1897) 263.

Militia as branch of executive department.— The militia of the state is, properly speaking, part of the executive branch of the state government. It is the strong arm and iron hand of the executive, to be used in the emergencies of invasions from without or of convulsions within the state, and in maintaining the supremacy of law and order within its borders. As an organized body, the militia is clothed, armed, quartered, and paid for services, by the state in pursuance of legislation. It is in fact part and parcel of the state government, and is generally known as the military department. Op. Atty.-Gen. (1897) 268, 269.

History of military organization.— The system has grown up and prevails in most of the states of organizing therein under state authority certain bodies of men out of the great body of the militia, as a uniformed force known as the national guard. Their limited number makes it possible to arm, equip and discipline them more perfectly and to bring them to a much higher degree of efficiency as a militia than can be attained by the great body of the militia. The state assumes the burden of maintaining them. They are subject to the orders of the chief executive of the state as commander in chief, until called into the actual service of the United States. They are organized and governed pursuant to state statutes and are disciplined in substantial conformity with the discipline of the army of the United States. People v. Hill, (1891) 126 N. Y. 497, 27 N. E. 789, affirming 59 Hun 624 mem., 13 N. Y. S. 637 and 13 N. Y. S. 186.

Power of courts over militia.— The Supreme Court has the power of redressing or remedying a usurpation or abuse of authority committed by an individual, or association of individuals, within the state, and this power extends over the military organization of the state. People v. Ewen, (1859) 17 How. Pr. 375.

§ 2. Enrollment. Whenever the governor shall deem it necessary, he may order an enrollment to be made by officers designated by him, of all persons liable to service in the militia. Such enrollment shall state the name, residence, age and occupation of the persons enrolled, and their previous or existing military or

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naval service. Three copies thereof shall be made; one shall be retained by the enrolling officer, one filed in the office of the town or city clerk in which the enrolled persons reside, one in the office of the clerk of the county in which the enrollment is made, and the original in the office of the adjutant-general of the state. If the governor so direct, such enrollment shall show separately all the sea-faring men of whatever calling or occupation; all men engaged in the navigation of the rivers, lakes and other waters of the state, or in the construction and management of ships and crafts, together with ship owners and their employees, yacht owners, members of yacht clubs and all other associations for aquatic pursuits.

This section was derived from the Military Law of 1908, § 2.
Falsely marking enrolled person as exempt: see PENAL LAW, § 1858.

§ 3. Notice of enrollment; exemption claims. The officer making the enrollment shall, at the time of making the same, serve a notice of such enrollment upon each person enrolled, by delivering such notice to him or leaving it with some person of suitable age and discretion, at his place of residence. All persons claiming exemptions must, within fifteen days after receiving such notice, file a written statement of such exemption, verified by affidavit, in the office of the county clerk. Such clerk shall thereupon, if such person be exempted according to law, mark the word "exempt" opposite his name; and the remainder of all thus enrolled, and not thus found to be exempt, shall constitute the militia of the state, and such clerk shall transmit a copy of such corrected roll to the adjutant-general of the state. The commanding officer of each organization in the national guard or the naval militia and the heads of the fire and police departments in each city or town shall, whenever an enrollment is ordered, file in the office of such county clerk a certified list of the names of all persons in his command or department.

This section was derived from the Military Law of 1908, § 3.
Falsely marking enrolled person as exempt: see PENAL LAW, § 1858.

§ 4. Examination of assessment-rolls and poll-lists. The assessors in each city, village, town or ward, in this state shall allow persons appointed to make such enrollment, at all proper times, to examine their assessment-rolls and take copies thereof,

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and the clerks of all counties, towns and cities, shall in like manner, at all proper times, allow such persons to examine and copy the poll-lists on file in their offices. All persons shall, upon the application of any person making such enrollment, give the name of and all other proper information concerning any person within their knowledge liable to be enrolled, under penalty of ten dollars for every concealment or false information, or refusal to give the information requested, to be recovered in the name of the people in any court, with costs. The officer making the enrollment shall, within ten days, report all persons who shall fail or neglect to give information to the adjutant-general of the state.

This section was derived from the Military Law of 1908, § 4.

§ 5. Designation and division of the militia. The militia of the state shall be divided into two parts; the active and the reserve militia; the active militia shall consist of the organized and uniformed military forces known as the national guard, and of the organized and uniformed naval forces know as the naval militia; the reserve militia shall consist of all those liable to service in the militia, but not serving in the national guard or in the naval militia of the state. The governor may order such organization of the reserve militia or of designated classes thereof or of volunteers therefrom as he may deem to be for the public interest and may adopt therefor such parts of the regulations governing the active militia or establish such special regulations, or both, as he may deem proper.

This section was derived from the Military Law of 1908, § 5. It was amended to read as above by L. 1916, ch. 568, § 1. The amendment added the last sentence.

What constitutes state militia: see CONSTITUTION, art. XI, § 1.

Cited.— This section was cited in Op. Atty.-Gen. (1913) 124.

§ 6. Commander-in-chief. The governor of the state, by virtue of his office, shall be the commander-in-chief of the militia of the state, except of such portions as may be at times in the service of the United States. When unable to perform his duties as such, except in cases when the lieutenant-governor or president of the senate, or the speaker of the assembly, under the laws of the state would perform them, the major-general shall command the militia of the state. But when the governor shall, with the consent of the legislature, be out of the state, in time of war, at the head of

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a military force thereof, he shall continue commander-in-chief of all the military force of the state.

This section was derived from the Military Law of 1908, § 6.

Governor as commander-in-chief of military and naval forces of state: see CONSTITUTION, art. IV, § 4.

Federal service as affecting commission.— In an opinion dated September 1, 1916, the attorney-general ruled that Major-General O'Ryan retained his commission as major-general of the state, notwithstanding his absence from the state in the service of the United States on the Mexican border. See 9 St. Dept. Rep. 406.

§ 7. Staff of the governor. The staff of the governor shall consist of the adjutant-general of the state, one military secretary of the grade of major or lieutenant commander, as the governor may direct, whose title shall be "military secretary to the governor," who shall be appointed by the governor and hold office during his pleasure, and whose term of office shall expire with the term of office of the governor appointing him, and not more than eighteen aides of whom sixteen shall[1] be appointed by the governor from the commissioned officers of the active militia in active service, and two may be appointed by the governor from officers on the reserve list,[2] and their appointment shall operate as a commission as aide-de-camp[3] but shall not add to the actual grade of the officers so appointed. Officers so detailed shall not be relieved from their ordinary duties, except when actually on duty with the governor. The pay, traveling expenses and subsistence of the military secretary shall be defrayed from the appropriation made by the legislature for the executive department.

This section was derived from the Military Law of 1908, § 7. It was amended to read as above by L. 1911, ch. 796; L. 1915, ch. 42. The amendment of 1911 substituted "grade" for "rank" near the beginning and added the words "or lieutenant commander as the governor may direct." The amendment of 1915 made the changes indicated in the footnotes.

Governor to appoint certain military officers: see CONSTITUTION, art. XI, § 4.

§ 8. Power of the governor in case of invasion. The governor shall have power, in case of insurrection, invasion, tumult, riot or breach of the peace, or imminent danger thereof, to order into the active service of the state any part of the militia that he may

[1] Words "eighteen aides of whom sixteen shall" substituted for words "sixteen aids to."

[2] Words "and two may be appointed by the governor from officers on the reserve list," new.

[3] Formerly "aid-de-camp."

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deem proper. When the militia of this state or a part thereof is called forth under the constitution and laws of the United States, the governor shall order out for service the active militia or such part thereof as may be necessary, and if the number available be insufficient he shall order out the remainder of the militia or such part as may be necessary. During the absence of organizations in the service of the United States their state designations shall not be given to new organizations.

This section was derived from the Military Law of 1908, § 8.

When governor may proclaim county in state of insurrection: see Code Crim. Pro., § 115.

Calling out militia for service: see 15 L. R. A. 116 note. *Are state militias subject to the articles of war of the United States:* see 40 L. R. A. (N. S.) 354 note.

Federal service as being within section 245.— In an opinion dated June 24, 1916, the attorney-general cited this section as indicating that service after mobilization, as a part of the United States army, constitutes service "under the provisions of this chapter," within the meaning of section 245, infra. See 8 St. Dept. Rep. 510. And see infra, § 245 note.

Cited.— This section was cited in Op. Atty.-Gen. (1908) 297.

§ 9. Drafts or volunteers from the militia. Whenever it shall be necessary to call out any portion of the reserve militia for active duty in case of insurrection, invasion, tumult, riot or breach of the peace or imminent danger thereof, or when called forth for service under the constitution and laws of the United States, the governor may call for and accept as many volunteers as are required for such service, or he may[1] direct his order to the mayor of any city or the supervisor of any town, who, upon the receipt of the same shall forthwith proceed to draft as many of the reserve militia in his city or town, or accept as many volunteers as are required by the governor, and shall forthwith forward to the governor a list of the persons so drafted or accepted as volunteers.

This section was derived from the Military Law of 1908, § 9. It was amended to read as above by L. 1916, ch. 568, § 2. The amendment is shown in the footnote.

§ 9-a. Drafts or volunteers from the reserve militia into the national guard and naval militia. For the purpose of maintaining the national guard and naval militia at the standard of efficiency required for public safety, or of conforming to any

[1] Words "in case of insurrection . . . or he may," added. Words "the governor shall," omitted.

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organization now or hereafter adopted for the army of the United States or prescribed by the laws of the United States for the organization of the national guard or naval militia, the governor may also, at any time, call for volunteers or order that an enrollment be made of that part of the reserve militia residing in any city or town, and that a draft be made, or volunteers secured therefrom, of such number as may be required to make up or complete the complement of organizations of the national guard or naval militia or any part thereof located therein; the governor in such case, shall direct his order to the mayor of any city, or supervisor of any town, specifying the number required in each case, and upon the receipt of such order, the said mayor or the supervisor, as the case may be, shall proceed forthwith to enroll the reserve militia residing within such city or town and to draft therefrom the number specified, or he may accept as volunteers as many as are required by the governor to make up such quota, and he shall forthwith forward to the governor a list of the persons so accepted as volunteers or drafted for such purpose. The names and addresses of all persons so drafted or volunteering, shall be certified by the governor to the commanding officers of the several regiments, battalions, squadrons, troops, companies or other units to which such persons are assigned for service, and the persons so named and certified shall be deemed for all purposes enlisted members of the organization and units of the national guard or naval militia, as the case may be, to which they are assigned, and entitled to all the rights and privileges and subject to all the obligations and duties of enlisted men therein, from and after the date of such certification, except those who may be found to be unacceptable or unqualified by the officers whose approval of enlistment application by the same persons, in the same organizations, would be required under the provisions of article five of this chapter. Persons rejected by such officers shall continue in the reserve militia and be subject to orders or drafts for service, under sections eight and nine and nine-a of this chapter.

New. Added by L. 1916, ch. 568, § 3.

§ 10. Punishment for failure to appear. Every member of the militia ordered out, or who volunteers or is drafted under the provisions of this article, who does not appear at the time and place

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designated by his commanding officer, the mayor or supervisor, within twenty-four hours from such time, or who does not produce a sworn certificate of physical disability, from a physician in good standing, to so appear, shall be taken to be a deserter and dealt with as prescribed in the articles of war of the United States.

This section was derived from the Military Law of 1908, § 10.
Failure to respond to military duty: see PENAL LAW, § 1487.

§ 11. Organization of reserve militia when ordered out. The portion of the reserve militia so accepted shall be immediately mustered into the service of the state for the lawful term of enlistment authorized by this chapter, or such less period as the governor may direct, and shall be organized into troops, batteries, companies, sanitary units, or naval divisions, which may be arranged in squadrons, battalions, regiments, field hospitals or ambulance companies, or assigned to organizations of the active militia already existing. The governor is authorized to appoint the officers necessary to commence or complete any organizations thus created. Such new organization shall be equipped, disciplined and governed according to this chapter and the military and naval regulations of the state.

This section was derived from the Military Law of 1908, § 11. It was amended to read as above by L. 1911, ch. 98, and L. 1916, ch. 568, § 4. The amendment by L. 1911, ch. 98, added the words "sanitary unit," and the words "field hospitals or ambulance companies." The amendment by L. 1916, ch. 568, § 4, substituted, in the first part of the section, the words "the lawful term of enlistment authorized by this chapter," in place of the words "one year."

§ 12. Proclamation of state of insurrection. Whenever any portion of the militia is employed in aid of the civil authority, the governor, if in his judgment the maintenance of law and order will thereby be promoted, may by proclamation declare the county or city in which the troops are serving or any specified portion thereof, to be in a state of insurrection.

This section was derived from the Military Law of 1908, § 12.
When governor may proclaim county in state of insurrection: see Code Crim. Pro., § 115.
Martial law: see Ann. Cas. 1914C 22, note. *Power of governor, in exercise of power to suppress insurrection, to authorize arrest and detention of persons without turning them over to the civil authorities:* see 12 L. R. A. (N. S.) 979, note.

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§ 13. When articles of war of the United States to be in force. Whenever any portion of the militia shall be on duty under or pursuant to the orders of the governor; or shall be on duty or ordered to assemble for duty in time of war, insurrection, invasion, public danger, or to aid the civil authorities on account of any breach of the peace, tumult, riot, resistance to process of this state, or imminent danger thereof, or for any other cause, the articles of war governing the army of the United States, the articles for the government of the United States navy, and the regulations prescribed for the army and navy of the United States, so far as such regulations are consistent with this chapter and the regulations issued thereunder, shall be in force and regarded as a part of this chapter until said forces shall duly be relieved from such duty.

As to offenses committed when such articles of war are so in force, courts-martial shall possess, in addition to the jurisdiction and power of sentence and punishment herein vested in them, all additional jurisdiction and power of sentence and punishment exercisable by like courts under such articles of war or the regulations or laws governing the United States army and navy or the customs and usages thereof, but no punishment under such rules and articles which shall extend to the taking of life shall, in any case, be inflicted except in time of actual war, invasion, or insurrection, declared by proclamation of the governor to exist, and then only after the approval by the governor of the sentence inflicting such punishment. Imprisonment other than in guard house shall be executed in jails or prisons designated by the governor for the purpose.

This section was derived from the Military Law of 1908, § 13.
Service without the state: **see infra, § 114.**
Cited.— This section was cited in Op. Atty.-Gen. (1910) 583; Op. Atty.-Gen. (1908) 297.

§ 14. Relief from civil and criminal liability; security for costs. Members of the militia ordered into the active service of the state by any proper authority, shall not be liable civilly or criminally, for any act or acts done by them while on duty. When an action or proceeding of any nature shall be commenced in any court by any person against any officer of the militia for any act done by such officer in his official capacity in the discharge of any duty under this chapter, or an alleged omission by him to do an act

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which it was his duty to perform, or against any person acting under the authority or order of any such officer, or by virtue of any warrant issued by him pursuant to law, the defendant may require the person instituting or prosecuting the action or proceeding, to file security for the payment of costs that may be awarded to the defendant therein, and the defendant in all cases may make a general denial and give the special matter in evidence. A defendant, in whose favor a final judgment is rendered in an action or a final order is made in a special proceeding, shall recover treble costs.

This section was derived from the Military Code of 1898, § 14.

Exemption from civil process: see infra, § 235.

Civil liability of member of militia for act performed in obedience to order of superior officer: see Ann. Cas. 1912D 328, note. *Civil liability of officer to civilian for acts of militia:* see 16 Ann. Cas. 1164, note. *Civil and criminal responsibility of militiamen:* see L. R. A. 1915A 1141, note. *Criminal jurisdiction of state court over member of national guard:* see Ann. Cas. 1917A 279 note. *Right to convict for offense against both military and civil authorities:* see 31 L. R. A. (N. S.) 710 note.

Constitutionality.—This section is constitutional. McLaughlin v. Kipp, (1903) 82 App. Div. 413, 81 N. Y. S. 896.

Security for costs.—Under this section, if it distinctly appeared that the cause of action was against officers of the militia for any act or acts done by them in their official capacity in discharge of any duty under the Military Law, the plaintiff would be required to give security for costs. McLaughlin v. Kipp, (1903) 82 App. Div. 413, 81 N. Y. S. 896.

§ 15. Militia council. There shall be for the state a militia council composed of the major general of the national guard, who shall be chief of the council, the commanding officer of the naval militia, the adjutant-general of the state and seven officers of the national guard in active service detailed by the governor and comprising one field officer of any arm of the service, three field officers of infantry, one field officer of the coast artillery corps, one field officer of cavalry, one field officer of field artillery and one officer on the reserve list. In the first instance three of the details shall be made for one year, two for two years and two for three years, but thereafter all details shall be made for three years. The additional officer from the reserve list authorized by this amended section, shall be appointed for three years. The chairmen of the committee* on military affairs of the senate and assembly shall serve on the council ex officio. An officer who has served on the council shall not be again detailed until the expiration of three years from the completion of his former term. In anticipation of vacancies the militia council shall submit to the

* So in the original.

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governor the names of officers recommended for detail, these having been selected by a committee of five officers of the active militia appointed by the militia council and to which two may be already serving as detailed members of the council. The militia council shall be advisory in its function. It shall recommend to the governor from time to time such action as it may deem advisable relating to the military law, regulations, organization, equipment, duty and discipline of the militia, and it shall report on matters referred to it by the governor, or by the legislature of the state, of by any committee thereof. The militia council shall make an annual report to the governor. The militia council shall hold stated sessions in Albany or elsewhere in the state as the governor or the council may direct in February, September and December in each year and extraordinary sessions shall be held at the call of the governor, the chief of the council or a majority of the members of the council.

This section was derived from the Military Law of 1908, § 15. It was amended to read as above by L. 1909, ch. 373, § 1; L. 1911, ch. 808; L. 1913, ch. 275, and L. 1915, ch. 453, § 1.

Qualification.— A member of the militia council, appointed as a field officer, loses his qualifications for membership in the council on becoming a general officer. Op. Atty.-Gen. (1912) 181.

Brigadier-general as member.— The section simply requires the detail of six officers with the requirement only that one of them shall be a brigadier-general and the other five not below the grade of captain. So that so long as there is a brigadier-general on the council the terms of the statute are complied with and fulfilled. Op. Atty.-Gen. (1910) 597.

Filling vacancies.— Where there is a vacancy in the council and an officer has been detailed to the position his term should be for the unexpired portion of the former officer's term of service. Op. Atty.-Gen. (1910) 595.

§ 16. The adjutant-general of the state. There shall be an adjutant-general of the state who shall be appointed by the governor and shall have the rank of brigadier-general. He shall hold office at the pleasure of the governor and his commission shall expire with the term for which the governor appointing him shall have been elected. He shall perform the duties prescribed for him in this chapter and such duties as pertain to the duties of the chiefs of staff departments.

1. He shall superintend the preparation of all returns and reports required by the United States from the state.

2. He shall keep a register of all the officers of the land and naval forces of the state, and keep in his office all records and

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papers required to be kept and filed therein, and make a report on or before the thirty-first day of December in each year, to the governor, including a detailed statement of all the expenditures for military and naval purposes during that year.

3. He shall, at the expense of the state, when necessary, cause the military and naval law, the general regulations of the state and articles of war of the United States, to be printed, indexed and bound in proper and compact form and distributed to the commissioned officers, sheriffs, clerks of boards of supervisors and county treasurers of this state at the rate of one copy to each; and to each commissioned officer and headquarters he shall issue one copy of the necessary text-books and of such annual reports concerning the militia as the governor may direct.

4. He shall cause to be prepared and issued all necessary blank books, blanks, forms and notices required to carry into full effect the provisions of this chapter. All such books and blanks shall be and remain the property of the state.

5. He shall attend to the safe-keeping and repairing of the ordnance, arms, accoutrements, equipments and all other military and naval property, belonging to the state or issued to it by the United States. All military and naval property of the state which after a proper inspection shall be found unsuitable for the use of the state shall under the direction of the governor be disposed of by the adjutant-general of the state at public auction after suitable advertisement of the sale daily for ten days in at least one newspaper published in the English language in the city or county where the sale is to take place; or the same may be sold at private sale when so ordered by the governor. He shall bid in the property or suspend the sale whenever in his opinion better prices may or should be obtained. All parts of uniforms before being offered for sale shall be so mutilated that they cannot be again used as uniforms. He shall from time to time render a just and true account of the sales made by him to the governor and shall expend the proceeds of the same in the purchase of other military or naval property as the governor may direct.

6. He shall keep a just and true account of all expenses necessarily incurred, including pay of officers and enlisted men, allowances to officers and organization, pensions and any other moneys required to be disbursed by him and through his office, including subsistence of the militia, transportation of the militia and of all

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military and naval property of the state or of the United States, and such expenses shall be audited and paid in the same manner as other military and naval accounts are audited and paid.

7. He shall issue such military and naval property as the governor shall direct and under his direction make purchases for that purpose. No military or naval property shall be issued to persons or organizations other than those belonging to the active militia, except to such portions of the reserve militia as may be called out by the governor. Purchases of property not exceeding one hundred dollars in value shall be made in such manner as the adjutant-general of the state shall direct. If such purchase requires an expenditure exceeding one hundred and not exceeding five hundred dollars the adjutant-general of the state shall procure written proposals to furnish such property from at least two parties and shall purchase such property from the lowest responsible bidder. If such purchase shall require the expenditure of a sum exceeding five hundred dollars he shall publicly advertise, for not less than ten days, for sealed proposals for furnishing such property; such proposals shall be publicly opened by the adjutant-general of the state at the place, day and hour designated in such advertisement. The adjutant-general of the state shall, if the governor approve, make contract with the lowest responsible bidder to furnish such property. All proposals and contracts made under the authority hereby conferred shall be filed in the office of the adjutant-general of the state. The adjutant-general of the state is authorized and directed whenever, in his opinion, it shall be to the interest of the state, to require a party who shall agree or contract to furnish such property to give bond to the people of this state in such sum and with such surety as he shall direct, conditioned for the faithful performance of such agreement or contract. In case of default such bond shall be prosecuted by the attorney-general and all moneys recovered shall be applied by the adjutant-general of the state to the benefit of the national guard. All property purchased under the authority hereby granted, shall be inspected by an inspector or an officer detailed for that purpose by the major-general or the commanding officer of the naval militia, and no payment shall be made therefor until it shall appear by the certificate of such officer that such property is of the kind and quality specified in such agreement or contract. In case of insurrection, invasion, tumult, riot, breaches of the

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peace or imminent danger thereof, the governor may, upon the certificate of the major-general or the commanding officer of the naval militia, temporarily suspend the operation of this paragraph and direct the adjutant-general of the state to purchase such military and naval property as may be required in open market. He shall report such action with the reasons therefor, and a statement of the property purchased and the prices paid therefor to the legislature at its next session.

8. The adjutant-general of the state upon the approval of the governor may sell to officers of the active militia for their official use and to organizations or units of the active militia any military or naval property which is an article of issue by the state at its cost price. Such sale shall be for cash or if to an organization or unit the price may be charged to and deducted from its military fund. The adjutant-general shall render a just and true monthly account of the sales made by him to the governor and shall expend the proceeds of the same in the purchase of other military or naval property as the governor may direct.

9. He shall render annually to the governor, a statement in detail showing the disposition of all clothing, ordnance, arms, ammunition and other military or naval property on hand or issued.

10. The seal now used in the office of the adjutant-general of the state shall be the seal of his office, and shall be delivered by him to his successor in office.

11. The adjutant-general of the state shall be the auditor of all military accounts payable by the state except such as are for expenditures made by him or through his office, which shall be audited by the comptroller. Copies of all orders and contracts relating to expenditures subject to his audit shall be filed in his office.

This section was derived from the Military Code of 1908, § 16. Subdivision 5 was amended to read as above by L. 1909, ch. 373, § 2. Subdivision 12, as enacted in the Military Law of 1908, and which related to the furnishing of certain arms to Grand Army posts, was repealed by L. 1909, ch. 240, § 55.

To whom adjutant-general may resign: **see PUBLIC OFFICERS LAW, § 31, subd. 2.**

Conflict of duties of state officers.—There seems to be no conflict between the duties which devolve upon the governor as commander in chief and upon the adjutant-general, in regard to the auditing and allowance of claims and expenditure of money for military purposes, and the duty imposed upon the comptroller in the same regard. Op. Atty.-Gen. (1897) 263, 270.

Federal service as affecting commission of adjutant.—In an opinion dated September 1, 1916, the attorney-general ruled that the adjutant-general

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retained his state commission, notwithstanding his absence from the state in the service of the United States on the Mexican border. See 9 St. Dept. Rep. 406.

Contracts for materials for uniforms.— Where a contract has been made for furnishing cloth to tailors for uniforms, the cloth to be paid for by tailors with whom the contracts are made for furnishing uniforms, such contract may be considered as continuing, and it is not necessary to make a new one annually. Op. Atty.-Gen. (1900) 203.

Disposition of uniforms.— Under the provisions of subdivision 5 of this section, where uniforms are sold which are prescribed for use by the guard at the time of sale, then they must be mutilated so "that they cannot be again used as uniforms." Where, however, the uniforms have become obsolete by duly promulgated regulations of the service and a new uniform not similar in appearance to those which have become obsolete has been prescribed for use by the guard, then the obsolete uniforms can be disposed of by the adjutant-general as garments on the removal of buttons, straps, knots and insignia of rank without further mutilation. Op. Atty.-Gen. (1910) 597, 598, 599.

Proceeds of sales of property unsuitable for use.— The provisions of this section concerning the adjutant-general's relation to the proceeds of sales of property which has become unsuitable, are subject to section 37 of the State Finance Law, under which such funds must be paid to the state treasurer. Op. Atty.-Gen. (1916), reported in 6 St. Dept. Rep. 473. In reaching this conclusion, the attorney-general distinguished a contrary opinion by his predecessor reported in Op. Atty.-Gen. (1910) 599. And see infra, § 243, note.

§ 17. Contingent fund. There shall be allotted to the adjutant-general of the state a sum not to exceed twenty-five thousand dollars, to be known as the contingent fund of the national guard and naval militia, which shall be available for all contingent expenses of the military and naval establishment of the state not otherwise provided for and shall be expended upon proper voucher by the adjutant-general of the state who shall report annually upon the condition of the fund.

The governor shall designate depositories for the fund in the cities of Albany and New York and may require the adjutant-general of the state to give bond with sufficient surety conditioned upon the faithful discharge of his duty.

This section was derived from the Military Law of 1908, § 17.

§ 18. The adjutant-general of the state, his pay, assistants and employees. The adjutant-general of the state shall have such assistants, and such clerks, employees and laborers as may be necessary from time to time who shall be appointed and shall be removed by him at his discretion, and any officer, who is such an assistant, may be rendered supernumerary by the governor at any time. He may by a writing filed in his office designate any one

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of his assistants to act as the adjutant-general of the state in the absence of the latter from the capital city of the state or in case of his inability to perform the duties of his office. There will be allowed to the adjutant-general of the state for his salary five thousand five hundred dollars annually. There shall be allowed annually fifteen thousand three hundred dollars or so much thereof as may be necessary for the salaries of the assistants. Necessary traveling expenses and subsistence of the adjutant-general of the state and his assistants when traveling on duty and under orders as well as the office expenses, clerical services and labor will also be allowed. The adjutant-general of the state may require his assistants or any of them to give bonds with sufficient surety in not exceeding fifteen thousand dollars each to the people of the state conditioned for the faithful discharge of their duties, such bonds to be approved by the governor and comptroller and filed in the latter's office.

This section was derived from the Military Law of 1908, § 18. It was amended to read as above by L. 1911, ch. 281, and L. 1913, ch. 3.

Exemption of military pay and rewards from execution: see Code Civ. Pro., § 1393.

Applicability of Civil Service Law: see CIVIL SERVICE LAW, § 2 and note.

Commissioning of adjutant-general's assistants.— Though this section does not, as it did prior to the amendment of 1913, make any provision for the commissioning of assistants to the adjutant-general, it contains no prohibition against the granting of such commissions, and such officers may be commissioned provided they possess the qualifications specified in sections 71 and 72, infra. Op. Atty.-Gen. (1915) 22.

§ 19. Bureau of records of the war of the rebellion; completion and preservation of the records and relics; free inspection of the same and quarters in the capitol. 1. The adjutant-general of the state shall establish and maintain as part of his office, a bureau of records of the war of the rebellion, in which all records in his office relating to such war, and relics shall be kept. He shall be the custodian of all such records, relics, colors, standards and battle flags of New York volunteers now the property of the state or in its possession, or which the state may hereafter acquire or become possessed of, and he shall appoint a chief of this bureau who shall hold office under his direction for six years.

2. The adjutant-general of the state by all reasonable ways and means, shall complete such records and gather from every available source such colors, standards and battle flags as were borne by New York state troops in the war of the rebellion, and such

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statistics and historical information and relics as may serve to perpetuate the memory and heroic deeds of the soldiers of the state, and keep and carefully preserve the same in such bureau.

3. He is authorized to request and accept from incorporated associations of veterans of the different regiments, statements and information duly authenticated by them, descriptive of their colors, standards and battle flags, together with the number and class of arms of the regiment, the date and place of muster into the service of the state and also into the service of the United States, the period of service, and the date and place of muster out, the date of departure for the seat of war, the various battles and engagements and places of service, including garrison duty, the time of joining brigades, corps and armies, with the time and nature of the service, and the names of colonels of such regiments, the names of those killed in action, including those who died of wounds, and the names of those who died of disease during their period of service. He is further authorized to ask the co-operation and assistance of the adjutant-general of the United States, and of the city, county and town authorities and officials, and of the Grand Army of the Republic, the Military Order of the Loyal Legion, and of organizations and persons in the state of New York and elsewhere in the collection of such other information, relics, memorials and battle flags as is contemplated by this article, in order to make as complete as possible the records, history and statistics of the patriotic service of the volunteer soldiers of the state during the war of the rebellion.

4. The adjutant-general of the state is directed to cause to be transcribed and kept in books of record in such bureau the historical facts, information and statistics as provided above; and is authorized to determine a convenient size for the volumes in which such statistics and historical data may be bound, and to request veteran associations and others proposing to supply such historical data and information to furnish the same on printed or manuscript sheets of a uniform size to correspond with the size of such volumes.

5. He is further authorized to provide locked and sealed cases with glass fronts, as nearly air-tight as practicable, in which shall be kept and displayed the colors, standards and battle flags above mentioned, and receive placards in duplicate, which incorporated regimental veteran associations are privileged and

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empowered to furnish and upon which shall be inscribed synopses of the historical information and statistics herein provided to be furnished to such bureau by regimental veteran associations, or failing to receive such data and information from such veteran associations, for the preparation of such placards, he may utilize the authentic information which he may obtain from other sources, as herein provided, which placards shall be uniform in size and color and shall be attached to or conspicuously placed in proximity to the colors, standards and battle flags to which they refer. If any placard or inscription shall be lost, destroyed or removed, the adjutant-general of the state shall at once replace it by duplicate of the original on file.

The legislature shall annually make suitable appropriations to enable the adjutant-general of the state to carry out the provisions of this section.

6. The books, records and other property and relics deposited in such bureau shall be open to inspection and use, except the use of the colors, standards and battle flags, at such reasonable hours and under such regulations as the adjutant-general of the state may determine. No battle flag, book or any property placed in such bureau for the purpose of this article, shall be removed therefrom, or from the immediate custody and control of the adjutant-general of the state without an act of the legislature.

7. The trustees of the capitol are authorized and directed to provide suitable and convenient quarters for the bureau of records whenever the adjutant-general of the state shall require and make demand therefor, and to properly fit up and prepare the same for the safe-keeping of such records, books and property, and for the display of such colors, standards, battle flags and relics which shall be known and maintained as the hall of military records. The several municipalities of the state may deposit their record books and papers relating to the war in the archives of the hall for safe-keeping, and transcripts therefrom shall be furnished on application by the chief officer of the municipality without cost to it. Officers or soldiers may deposit therein their discharge papers, descriptive lists, muster rolls or company or regimental books and papers for safe-keeping.

The interest arising from the investment of the funds contributed by towns, cities and individuals for the erection of a

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hall of military records shall be devoted to the maintenance of the hall of military records provided in this section.

This section was derived from the Military Law of 1908, § 19.

Scope, investment and use of military record fund: see STATE FINANCE LAW, § 100.

Removal, mutilation or destruction of any relic or record in state military bureau: see PENAL LAW, § 1426, subd. 14.

Applicability of Civil Service Law: see CIVIL SERVICE LAW, § 2 and note.

§ 20. Armory commissions. Whenever any arsenal, armory or other quarters of the militia, camp-ground or rifle-range is owned or leased by the state or by the United States for the use of the organized militia of the state, the same shall be under the charge of an armory commission. When any such property is devoted to the use of the national guard or naval militia, the commission in charge thereof, except as hereinafter provided, shall consist of the major-general, the adjutant-general of the state, the commanding officer of the naval militia and the commanding officer of the brigade whose headquarters are within the district where such property is located.

When any such property is devoted to the general use of the organized militia, the commission in charge thereof shall consist of the major-general, the adjutant-general of the state, the commanding officer of the naval militia and the commanding officers of all of the brigades, and such commission is hereby authorized to appoint and at its pleasure remove a secretary, inspectors and such other employees as may be necessary and fix their compensation, and such persons so employed shall act for all armory commissions herein created. The office, traveling and other expenses of the commissions and employees herein provided for and the compensation of said employees shall be a charge against the appropriations which annually shall be made by the legislature for the repairs and improvements and betterments of the state arsenals, armories, camp-grounds and rifle-ranges and for necessary office and travelling expenses of the commissions provided for in this chapter.

From the time this chapter takes effect, a commission so constituted shall take charge of the erection and completion, alteration, repair, enlarging, renting and equipping of all such armories or other property as may hereafter be authorized, and of all such property the erection or completion, alteration, repair, enlarging and equipping of which is in progress at the time this chapter

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takes effect under any general or special law; and as to such work as is in progress, such commission is hereby invested with all the powers conferred by law on any officers, boards or commissions theretofore charged with such work or any part thereof.

It shall keep in good repair the arsenals, armories, quarters, camp-grounds and rifle-ranges in its charge, and all moneys appropriated heretofore or which may be appropriated hereafter for the erection, repair, alteration, enlarging or equipment of such buildings, grounds and ranges shall be expended by the commission in charge thereof in the same manner as other moneys appropriated for military or naval purposes are authorized to be expended, except as herein otherwise provided.

The state architect shall perform such services as may be required by the armory commissions.

When expenditures not exceeding one hundred dollars are necessary, the officer in charge of the building or grounds shall report to the armory commission what is required to be done, submitting estimates from at least two responsible parties, and the armory commission may authorize the officer to cause the work to be done, designating the party who shall do the work. When expenditures which will amount to more than one hundred but not more than five hundred dollars are required, a full statement of the necessity thereof must be made by the officer in charge to the armory commission, who shall cause estimates of the cost of the work to be prepared by two or more parties, have them examined by an architect or inspector employed by the commission and then cause the work to be done under a contract entered into by it for that purpose. When expenditures are to be made which will exceed five hundred dollars, the commission shall advertise for proposals, bids shall be received, and contracts regularly entered into.

During, and upon the completion of the work, the expenditure for which will exceed five hundred dollars, it shall be inspected from time to time by an inspector employed by the commission, and payment shall not be made until it appears by the certificate of such inspector that such work has been properly performed and according to the provisions of the contract.

Expenditures which do not exceed five hundred dollars shall only be made upon a like certificate of the inspector or of the

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officer in charge of the building or grounds where the work is performed.

Copies of all contracts and agreements made for material or work in connection with arsenals, armories, quarters, camp-grounds or rifle-ranges of the state shall immediately be filed in the office of the comptroller of the state, who shall be the auditor of the accounts of the commissions herein provided for.

Whenever any real property, except in city of New York, is taken for the purpose of erecting a state armory thereon, the buildings on such property or the old materials in the same, may be sold by the armory commission at public or private sale, for the best price that can be obtained, and if the property is taken by the state the net sum realized therefrom shall be paid into the state treasury, to the credit of the armory commission of the brigade district in which the property is located, and if taken by a county, to the county treasurer of such county for the use of the county.

When real property shall be required for the purpose of a state camping ground, or for rifle practice, or other military or naval purposes deemed necessary by the armory commission, and such armory commission is unable to agree with the owners for the purchase thereof, title thereto shall be acquired by the attorney-general in the name of the people of the state by condemnation, on the written application of the armory commission. The cost of all real property so taken, and damages and expenses incurred, by and awarded in any proceedings for the condemnation of any such property, shall be paid by the state.

The words "armory commission" when used in this chapter shall be construed to refer to the commissions provided for by this section.

This section was derived from the Military Law of 1908, § 20. It was amended to read as above by L. 1913, ch. 558, § 1.

Trespass upon rifle range: see PENAL LAW, § 1426, subd. 14.

Condemnation generally: see Code Civ. Pro., § 3357 et seq.

General purpose of section.—It would seem that the legislature intended to take out of operation of the Public Buildings Law the construction of state armories, and placing the same in the charge of a commission, the creation of which is therein provided for, and to plainly permit such commission to appoint and select its own architects and inspectors, necessary to the commission for the accomplishment of its purposes. Op. Atty.-Gen. (1901) 202, 205, 206.

Personnel of commission as affected by federal service.— The major-general and the adjutant-general continue to be members of the armory commission notwithstanding absence from the state in the service of the United States.

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And brigade commanders of the second division created by the governor from the troops remaining in the state after the departure of the regular organizations for the Mexican border, were declared by the attorney-general, in an opinion filed Sept. 1, 1916, to be members of the armory commission. See 9 St. Dept. Rep. 406.

Secretary to commission.— It seems that formerly there was no statutory authority for the appointment of a secretary to the armory commission and that he was appointed by the commission as its agent in making disbursements for convenience sake. Op. Atty.-Gen. (1913) 4.

Delegation of authority.— The authority of the major-general as a member of the state armory commission cannot be delegated. Op. Atty.-Gen. (1916) reported in 9 St. Dept. Rep. 406.

Disposition of materials.— The state armory commissioners, in the absence of express statutory authority, is not authorized to sell material on the state's property used for a rifle range. If this property was to be used for the purpose of erecting a state armory the material in question might be sold, but otherwise when such is not the case. Op. Atty.-Gen. (1912) 513, 514.

Payment of embezzlements.— Where the armory commission had placed in the hands of its secretary money to pay certain accounts, which claims had been audited, and he having died without paying a large portion of them and having used a considerable portion of this money for other purposes, it was ruled that the commission might in its discretion use the available balance to pay such creditors and the order in which they were paid was within the discretion of the commission. Op. Atty.-Gen. (1913) 4.

Check accompanying bid.— Where the certified check of the lowest bidder on repairs and improvements does not equal five per cent of the bid as required by the specifications of the commission, the commission may use its discretion in waiving the irregularity and accepting such bid. The statute does not require a bid to be accompanied by a check. Op. Atty.-Gen. (1910) 611.

Powers over repair contracts.— The armory commission has supervisory power only over repairs, contracts and expenditures. Op. Atty.-Gen. (1908) 305, 306.

§ 21. Legal adviser of the commander-in-chief. The attorney-general of the state shall be the legal adviser of the governor, of the adjutant-general of the state, and of the armory commission.

This section was derived from the Military Law of 1908, § 21.

§ 22. Audit and payment of accounts. No officer of the militia shall incur any expense whatsoever to be paid by the state, except such as are authorized in this chapter, without first obtaining the authority of the governor; in extreme emergencies however, the commanding officer of any organization or detachment of the active militia may make purchases of such necessities as are absolutely required for the immediate use and care of his command; a report of such action, containing a statement of the articles purchased and the price thereof, must be made forthwith through the channel to the adjutant-general of the state. The comptroller of the state shall be the auditor of all accounts

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for property purchased by the adjutant-general of the state and copies of the orders or contracts under which such purchases are made, shall be filed in his office. All other military or naval accounts payable by the state, except as otherwise provided, shall be audited by the adjutant-general of the state. Military and naval accounts thus audited, shall be paid by the treasurer of the state from the proper appropriation made by the legislature, upon the warrant of the comptroller.

This section was derived from the Military Law of 1908, § 22. It was amended to read as above by L. 1913, ch. 558, § 1. The amendment added the words "except as otherwise provided" in the third sentence.

Cited.—This section was cited in Op. Atty.-Gen. (1913) 4.

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ARTICLE 1-A*

Military and Disciplinary Training

Section 26. Military training commission, its assistants, employees and expenses.
27. Physical and disciplinary training in schools; military training.
28. Field training for boys.
29. General powers and duties of the commission.
29-a. State military property, including armories, may be used.
29-b. Use of school buildings.
29-c. Expenses of detailed officers and men.
29-d. Definitions; article not applicable to certain schools.

§ 26. Military training commission, its assistants, employees and expenses. A military training commission for the state is hereby established composed of the major general commanding the national guard ex officio, who shall be chairman of the commission, a member to be appointed by the board of regents of the university of the state and a member to be appointed by the governor. The appointed members shall hold office for terms of four years.

The commission shall meet at such places within the state at such stated times as it determines and other meetings shall be held at the call of the chairman or of a majority of the members of the commission at a time and place stated in the call.

The commissioners shall not receive any compensation for their services as such, but they shall be paid their traveling expenses actually and necessarily incurred in the performance of their duties as commissioners.

The commission may appoint and at pleasure remove an inspector of physical training at a salary not exceeding five thousand dollars a year and other assistants and clerks and employees at salaries to be fixed by the commission.

The commission shall make an annual report to the governor containing a summary of the business transacted with a statement in detail of its expenditures.

New. Added by L. 1916, ch. 566.

* This is a new article, added by L. 1916, ch. 566.

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§ 27. Physical and disciplinary training in schools; military training. (1) The military training commission shall advise and confer with the board of regents of the university of the state of New York as to the courses of instruction in physical training to be prescribed for elementary and secondary schools as provided in the education law.

In order to more thoroughly and comprehensively prepare the boys of the elementary and secondary schools for the duties and obligations of citizenship, it shall also be the duty of the military training commission to recommend from time to time to the board of regents the establishment in such schools, of habits, customs and methods best adapted to develop correct physical posture and bearing, mental and physical alertness, self-control, disciplined initiative, sense of duty and the spirit of co-operation under leadership.

(2) After the first day of September, nineteen hundred and sixteen, all boys above the age of sixteen years and not over the age of nineteen years, except boys exempted by the commission, shall be given such military training as the commission may prescribe for periods aggregating not more than three hours in each week during the school or college year, in the case of boys who are pupils in public or private schools or colleges, and for periods not exceeding those above stated between September first of each year and the fifteenth day of June next ensuing in the case of boys who are not pupils; but any boy who is regularly and lawfully employed in any occupation for a livelihood shall not be required to take such training unless he volunteers and is accepted therefor. Such training periods, in the case of pupils in such schools and colleges, shall be in addition to prescribed periods of other instruction therein and outside the time assigned therefor. Such training shall be conducted under the supervision of the military training commission by such male teachers and physical instructors of schools and colleges as may be assigned by the boards of education or trustees of such schools or governing bodies of such colleges and accepted by the commission, and by officers and enlisted men of the national guard and naval militia detailed for that purpose by the major-general commanding the national guard or such officer and enlisted men of the United States army as may be available. The officers and enlisted men of the national guard and naval militia so detailed shall, while in

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the actual performance of the duties of the detail, receive such percentage of the pay authorized by this chapter for officers and enlisted men of the national guard and naval militia of their respective grades and length of service as may from time to time be fixed by the commission. Teachers and instructors assigned from schools and colleges shall be paid such compensation as the commission may determine out of moneys appropriated for carrying out the provisions of this article.

New. Added by L. 1916, ch. 566.
Exclusion of military drills in schools: see EDUCATION LAW, § 713. *Adoption of rules by regents to carry provisions of Military Law into effect:* see EDUCATION LAW, § 695.

§ 28. Field training for boys. Within the limit of appropriations therefor, the commission shall establish and maintain state military camps of instruction for field training of boys who are physically fit and above the age of sixteen years and not over the age of nineteen years and who are accepted therefor by the commission. In determining the persons to receive such field training, where moneys available are not sufficient to provide for all, preference shall be given in the following order unless otherwise provided by law: (1) To male pupils in attendance during the preceding school year in secondary schools; (2) pupils in attendance at state agricultural schools and state agricultural colleges during that period; (3) the other boys above specified. The camps shall be located in such places throughout the state as the commission may determine. Any society, organization or association having a fair ground and entitled to an apportionment of state moneys under sections three hundred and ten and three hundred and eleven of the agricultural law, shall, upon the request of the commission, allow the use of its grounds, or part thereof, for any such camp, when the grounds are not needed for its own purposes, unless previously leased to other parties; and if any such society, association or organization shall refuse to allow the use of its grounds as above provided, the moneys otherwise due to it under such law shall be withheld each year in which such refusal occurs. Such field training shall be given annually, during the summer months, and shall for each detachment of boys cover a period of not less than two or more than four weeks, as the commission may determine. Such camps and the training and discipline thereat shall be under the direction and charge

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of the major general commanding the national guard, subject to the supervision of the commission. The major general commanding the national guard shall detail for service at such camps, such number of officers and enlisted men of the national guard and naval militia as may be required by the commission. Such officers and enlisted men during such detail shall receive pay, subsistence and transportation as authorized in this chapter and the regulations issued thereunder for officers and enlisted men of their grades and length of service on duty under orders of the major general, commanding the national guard.

New. Added by L. 1916, ch. 566.

§ 29. General powers and duties of the commission. The commission in addition to the powers elsewhere in this article conferred on it shall have power to

1. Provide for the observation and inspection of the work and methods prescribed under the provisions of this article, or under the provisions of the education law relating to instruction in physical training prescribed after conference with the commission.

2. Prescribe the powers and duties of the inspector of physical training.

3. Regulate the duties of clerical and other assistants and employees of the commission.

4. Prescribe rules and regulations for compulsory attendance during the periods of military training provided in this article.

5. Regulate individual exemptions from prescribed military training.

6. Maintain, and co-operate with the colleges in the state or the federal authorities in maintaining, courses of instruction for male teachers and physical instructors and others who volunteer and are accepted by the commission.

7. Make regulations and rules for fully carrying into effect the provisions of this article.

New. Added by L. 1916, ch. 566.

§ 29-a. State military property, including armories, may be used. The authorities in charge of armories may, upon the application of the military training commission, allow the use of any armory of the national guard and naval militia for the conduct of military drills provided for by this article, and may authorize

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the temporary use by boys for whom military instruction is provided as prescribed in this article, for the purpose of such drills, of arms and other equipment of the national guard and naval militia, belonging to the state, not then required for the use of the national guard or naval militia, and of arms and other equipment which may have been rendered obsolete and unserviceable and which may be retained and issued for such purpose, under such rules and regulations as the proper military authorities may prescribe. The military authorities of the state are authorized and empowered to loan to the military training commission such military property as may be necessary in the organization and maintenance of field training camps, and to carry out the provisions of this article.

New. Added by L. 1916, ch. 566.

§ 29-b. Use of school buildings. The school authorities throughout the state are authorized to permit the use of school buildings and school grounds for the purpose of carrying out the provisions of this article.

New. Added by L. 1916, ch. 566.

§ 29-c. Expenses of detailed officers and men. The expenditures authorized to be made by this article to officers and enlisted men of the national guard detailed as therein authorized shall be paid from funds appropriated to carry out the provisions of this article.

New. Added by L. 1916, ch. 566.

§ 29-d. Definitions; article not applicable to certain schools. The expression "school authorities" as used in this article shall be construed to have the same meaning and effect as is given to such expression in the education law. "Secondary schools" mean schools for "secondary education," as defined in such law, to the extent that they provide such education. None of the provisions of this article shall apply to any agricultural college in any institution in this state which receives the benefits of the act of congress of July second, eighteen hundred and sixty-two, providing for instruction in agriculture, the mechanic arts, and military training, and in which instruction in military tactics is now required of pupils, nor shall it apply to pupils therein.

New. Added by L. 1916, ch. 566.

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ARTICLE 2

The National Guard of the State

Section 30. Composition and strength.
31. Division and brigades.
32. Staff departments.
32-a. Quartermaster corps.
33. Corps of engineers.
34. Signal corps.
35. Infantry.
36. Cavalry.
37. Field artillery.
38. Coast artillery corps.
39. Civilian cooks.
40. Aides.
40. Colored regiment of infantry.
41. Training detachments.

§ 30. Composition and strength. The national guard of the state shall consist of a major-general, brigadier-generals, and adjutant-general's department, an inspector-general's department, a judge-advocate-general's department, an ordnance department, a quartermaster corps, a corps of engineers, a coast artillery corps, a medical department, a signal corps, the commissioned officers heretofore or hereafter retired or rendered supernumerary, the organizations forming the national guard at this date, such others as may be organized hereafter and such persons as are enlisted and commissioned therein. The governor shall have power to alter, divide, annex, consolidate, disband or reorganize any organization, department or corps and create new organizations, departments or corps when required by the provisions of this chapter or whenever in his judgment the efficiency of the state forces will be thereby increased, and he shall have power to change the organization of any organization, department or corps so as to conform to any organization, system of drill or instruction now or hereafter adopted by the army of the United States or prescribed by the laws of the United States for the government of the militia, and for that purpose the number of the officers and non-commissioned officers of any grade in any organization, department or corps may be increased or diminished and the grades of such officers

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and non-commissioned officers may be altered to the extent necessary to secure such conformity. The governor shall have power to fix and from time to time to alter the maximum number of enlisted men which shall form part of any organization, department or corps irrespective of but not exceeding the maximum prescribed therefor in this chapter. The aggregate forces of the national guard in time of peace, fully armed, uniformed and equipped, shall be not less than ten thousand and not over twenty-three thousand enlisted men, but the governor shall have power in case of war, insurrection, invasion or imminent danger thereof to increase the forces beyond the said twenty-three thousand and organize the same as the exigencies of the service may require.

This section was derived from the Military Law of 1908, § 30. It was amended to read as above by L. 1909, ch. 370; L. 1916, ch. 564, § 1.

Discrimination against members of national guard: see PENAL LAW, § 1481.

Discrimination against United States uniform: see PENAL LAW, § 517.

Power of governor to disband: see 23 L. R. A. 510, note.

General power of governor.— The governor as the commander-in-chief of the militia is the supreme head of the military forces of the State, and has the right to consolidate and reorganize the departments and corps. People v. Scrugham, (1857) 25 Barb. 216.

Consolidation.— The governor of the state as commander-in-chief of the militiary forces of the state, has power to consolidate companies and regiments. People v. Ewen, (1859) 17 How. Pr. 375.

Validity of creation of second division.— Under the authority vested in the governor by this section he had power to constitute as the second division of the national guard all the militia remaining in the state after the departure of the state troops to the Mexican border in the service of the United States. Op. Atty.-Gen. (1916) reported in 9 St. Dept. Rep. 406.

Constitutional right to disband.— The power conferred on the governor to disband an existing military organization and thereby to relieve an officer of his command is not in conflict with the constitution or statutes of the United States. People v. Hill, (1891) 126 N. Y. 497, 27 N. E. 789, affirming 59 Hun 624 mem., 13 N. Y. S. 637, 13 N. Y. S. 186.

Judicial review.— "An order of the Governor disbanding a company deprives them of no property, subjects them to no penalty, and effects no personal right cognizable in a civil tribunal. The officer, who complains, is still an officer as before, and the fact that his command is taken away is the result of a military order of his superior, and he must seek his redress in an appeal to him. Deprivation of command is not a civil injury. The private who complains has no vested right which is effected by his discharge from the service. The Statute authorizing it put the matter in the discretion of the governor and because that discretion was confided to his judgment this did not make its exercise a judicial power. Nor does the fact that an act of the legislature is unconstitutional alone authorize the intervention of the judicial power. Where such an act is sought to be enforced against an individual, so as to touch some private right or interest cognizable by courts of law, then he may invoke their aid." People v. Hill, (1891) 126 N. Y. 497, 27 N. E. 789, affirming 59 Hun 624 mem., 13 N. Y. S. 637, 13 N. Y. S. 186.

Cited.—This section was cited in Op. Atty.-Gen. (1913) 124.

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§ 31. Division and brigades. The brigades and other military units of the national guard shall constitute a division, which shall be commanded by a major-general. The staff of the division shall consist of officers, detailed from the various staff corps and departments as follows:

One adjutant-general, colonel, and two adjutants-general, lieutenant-colonels, adjutant-general's department.

One inspector-general, colonel, two inspectors-general, lieutenant-colonels, and one inspector-general, major, inspector-general's department.

One judge advocate, colonel, judge-advocate-general's department.

One quartermaster, colonel and one quartermaster, lieutenant-colonel, quartermaster corps.

One surgeon, lieutenant-colonel, medical corps, two surgeons, majors, medical corps.

One engineer, lieutenant-colonel, corps of engineers.

One ordnance officer, colonel, one ordnance officer, major, and one ordnance officer, captain, ordnance department.

One signal officer, major, signal corps.

One coast defense officer, lieutenant-colonel, coast artillery corps.

Three aides, captains or lieutenants, from the national guard.

A brigade shall consist of two or more regiments of infantry, but separate battalions and separate companies may be assigned thereto. There shall be such number of brigades composed of such infantry organizations as the governor may direct. A brigade shall be commanded by a brigadier-general. The staff of a brigade shall consist of officers detailed from the various staff corps and departments, as follows:

One adjutant-general, major, adjutant-general's department.

One judge-advocate, major, judge-advocate-general's department.

Two quartermasters, majors, quartermaster corps.

One ordnance officer, major, ordnance department.

Two aides, lieutenants, from the national guard.

In addition to the officers above specified the governor upon the recommendation of the major-general may detail from the national guard for duty on the staff of the division or on the staff of a brigade such other officers as may be considered necessary.

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The ranking officers of the quartermaster corps, medical corps, corps of engineers, ordnance department and signal corps on the staff of the division shall be respectively designated as chief quartermaster, chief surgeon, chief engineer, chief ordnance officer and chief signal officer, but such designations shall not constitute such officers chiefs of the staff departments to which they belong.

This section was derived from the Military Law of 1908, § 31. It was amended to read as above by L. 1909, ch. 370; L. 1916, ch. 564, § 2.

§ 32. Staff departments. There shall be the following departments consisting of officers of number and rank hereinafter specified necessary for the staffs of the division, the brigades and for duty with the several organizations of the national guard, as follows:

An adjutant-general's department consisting of one colonel, two lieutenant-colonels, five majors and one captain; an inspector-general's department, consisting of one colonel, two lieutenant-colonels and four majors; a judge-advocate-general's department consisting of one colonel and four majors; an ordnance department consisting of one colonel, six majors, and one captain; a medical department to consist of the medical corps composed of one lieutenant-colonel, twenty-three majors, one hundred and twenty-one captains and first lieutenants and the hospital corps, field hospitals and ambulance companies.

Upon the recommendation of the major-general the governor may appoint and commission such additional officers not above the rank herein prescribed as may be necessary to properly perform the duties of the departments hereby created.

There shall also be appointed twenty-two ordnance sergeants who shall belong to the ordnance department.

The hospital corps shall consist of sergeants first class, sergeants, corporals, privates first class, and privates enlisted therein of such numbers as the governor on the recommendation of the major-general may from time to time prescribe.

Upon the recommendation of the major-general the governor may fix and increase or decrease the number of departmental noncommissioned staff officers.

This section was derived from the Military Law of 1908, § 32. It was amended to read as above by L. 1909, ch. 370; L. 1911, ch. 167; L. 1916; ch. 473, § 1.

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Number of staff officers.— This section formerly provided that upon the recommendation of the Major-General the governor might "fix the number of non-commissioned officers" and "increase or decrease the number of post non-commissioned staff officers." It was ruled that under this provision the govenor had the power upon the recommendation of the Major-General to increase or decrease the number of post non-commissioned staff officers above or below the number specified in the section. Op. Aty.-Gen. (1909) 499.

§ 32-a. Quartermaster corps. There shall be a quartermaster corps to consist of one colonel, three lieutenant-colonels, eight majors, eight captains, two veterinarians, wagon companies, auto-truck companies, pack train companies, and bakery companies with such enlisted personnel as the governor may from time to time designate, and such enlisted men for assignment to organizations as may be from time to time prescribed.

New. Added by L. 1916, ch. 564, § 3.

§ 33. Corps of engineers. There shall be a corps of engineers to consist of one lieutenant-colonel, three majors, one captain as adjutant, one captain as supply officer, one captain as inspector small arms practice, one chaplain, one pioneer battalion, one pontoon battalion and one band organized as prescribed for an infantry band. For purposes of administration, drill and instruction, the pioneer battalion and the pontoon battalion may be placed under the command of the lieutenant-colonel, corps of engineers.

A battalion of engineers shall consist of:
One major.
One captain (adjutant).
One battalion sergeant major.
One supply detachment, and
Four companies.
A supply detachment shall consist of
One first lieutenant (supply officer).
One battalion quartermaster-sergeant.
A company of engineers shall consist of:
One captain.
One first lieutenant.
One second lieutenant.
One first sergeant.
One quartermaster-sergeant.
Five sergeants.
Eight corporals.

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Two cooks.
Two musicians.
Eighteen privates, first class.
Five privates, first or second class (mounted) and
Twenty-three privates, second class.

The minimum enlisted strength of a company of engineers shall be sixty-five.

The maximum enlisted strength of a company of engineers shall be one hundred and sixty-four.

The governor, upon the recommendation of the major-general may increase the number of sergeants to twelve, the number of corporals to eighteen, the number of first class privates to sixty-four and the number of second class privates to sixty-four.

The enlisted force herein provided and the officers serving with the organized battalions shall constitute a part of the line of the national guard.

This section was derived from the Military Law of 1908, § 33. It was amended to read as above by L. 1909, ch. 370; L. 1916, ch. 564, § 4.

§ 34. Signal corps. There shall be a signal corps which shall be a staff corps and shall consist of officers of the number and grade herein specified necessary for the performance of the duties of signal officers on the different staffs and other duties properly pertaining to the signal corps and the officers assigned to duty with battalions, companies and detachments of the signal corps, as follows:

One major who shall command the signal corps and be chief signal officer of the division, three captains, eleven first lieutenants, and enlisted men, of the number and grade as follows:

Three master signal electricians, sixteen first class sergeants, twenty-eight sergeants, thirty-nine corporals, one hundred and four first class privates, twenty-three privates, six cooks.

A battalion of the signal corps shall consist of one major, one first lieutenant (battalion adjutant and quartermaster), two first class sergeants (acting sergeant-major and acting battalion quartermaster-sergeant), two sergeants (color sergeant and clerk), five first class privates (four orderlies and one driver), one wire company, one radio company, a wire company of the signal corps shall consist of one captain, two first lieutenants, and a maximum enlisted strength of the different grades, as follows: one master

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signal electrician, five first class sergeants, eight sergeants, twelve corporals, two cooks, forty-one first class privates, eight privates.

A radio company of the signal corps shall consist of one captain, two first lieutenants, and a maximum enlisted strength of the different grades, as follows: one master signal electrician, six first class sergeants, ten sergeants, fifteen corporals, two cooks, thirty-seven first class privates, six privates.

There shall also be a telegraph and telephone detachment of the signal corps and an aero company of the signal corps, which organizations shall be attached to the headquarters of the battalion.

A telegraph and telephone detachment of the signal corps shall consist of: one first lieutenant, and a maximum enlisted strength of the different grades, as follows: one first class sergeant, three sergeants, three corporals, seven first class privates, three privates.

An aero company of the signal corps shall consist of one captain, five first lieutenants, and a maximum enlisted strength of the different grades as follows: one master signal electrician, two first class sergeants, five sergeants, nine corporals, two cooks, fourteen first class privates, six privates.

This section was derived from the Military Law of 1908, § 34. It was amended to read as above by L. 1916, ch. 474.

§ 35. Infantry. A regiment of infantry shall consist of:

One colonel.

One lieutenant-colonel.

One captain (inspector small arms practice).

One chaplain.

One headquarters company.

One supply company.

One machine gun company.

Three battalions.

The minimum enlisted strength shall be nine hundred and eighteen.

The maximum enlisted strength shall be one thousand eight hundred and thirty-six.

A battalion of infantry shall consist of:

One major.

Four companies.

The minimum enlisted strength shall be two hundred and sixty.

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A company of a battalion of infantry shall consist of:
One captain.
One first lieutenant.
One second lieutenant.
One first sergeant.
One quartermaster sergeant.
Four sergeants.
Six corporals.
Two cooks.
One artificer.
Two musicians.
Forty-eight privates.

The minimum enlisted strength, exclusive of enlisted men detailed to headquarters, supply and machine gun companies, shall be sixty-five.

The maximum enlisted strength shall be one hundred and fifty.

The governor may, upon the recommendation of the major-general, increase the number of sergeants in a company of infantry to six, of corporals to ten, and of privates to one hundred and twenty-seven.

A headquarters company, infantry, shall consist of:
One captain (regimental adjutant).
Three first lieutenants (battalion adjutants).
Band section:
One chief musician.
One principal musician.
One drum major.
Four sergeants.
Eight corporals.
One cook.
Thirteen privates (one being a detailed private and acting cook).
Non-commissioned staff section:
One regimental sergeant major.
Two color sergeants.
Three battalion sergeants major.
Mounted orderly section (detailed from companies of battalions).
One sergeant.

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Nineteen privates.

A supply company, infantry, shall consist of:

One captain, (regimental quartermaster).

One captain, (regimental commissary) when not on duty with machine gun company.

Three second lieutenants (battalion quartermasters and commissaries), when one is not on duty with machine gun company.

One regimental quartermaster sergeant.

One regimental commissary sergeant.

Three sergeants (detailed from companies of battalions).

Two corporals (detailed from companies of battalions).

Twenty-six privates (detailed from companies of battalions).

A machine gun company, infantry, shall consist of:

One captain (regimental commissary).

One second lieutenant (battalion quartermaster and commissary).

Eight sergeants (detailed from companies of battalions).

Six corporals (detailed from companies of battalions).

Thirty-six privates (detailed from companies of battalions).

This section was derived from the Military Law of 1908, § 35. It was amended to read as above by L. 1916, ch. 564, § 5.

§ 36. Cavalry. A regiment of cavalry shall consist of:

One colonel.

One lieutenant-colonel.

One captain (adjutant).

One captain (inspector small arms practice).

One chaplain.

Two veterinarians.

One headquarters troop.

One machine gun troop.

Three squadrons.

The minimum enlisted strength shall be nine hundred and nineteen.

The maximum enlisted strength shall be one thousand, two hundred and thirty-six.

A squadron of cavalry shall consist of:

One major.

One second lieutenant (squadron quartermaster and commissary).

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One squadron sergeant major.

One squadron service detachment (three privates detailed from troops of the squadron).

Four troops.

Its minimum enlisted strength shall be two hundred and ninety-five or six.

A separate squadron of cavalry shall consist of:

One major.

One first lieutenant (squadron adjutant).

One first lieutenant (inspector small arms practice).

One second lieutenant (squadron quartermaster and commissary).

One veterinarian.

One squadron sergeant major.

One squadron service detachment (three privates detailed from troops of the squadron).

Four troops.

A troop of cavalry shall consist of:

One captain.

One first lieutenant.

One second lieutenant.

One first sergeant.

One quartermaster sergeant.

Six sergeants.

Six corporals.

Two cooks.

One farrier.

One horseshoer.

One saddler.

One wagoner.

Two trumpeters.

Forty-three privates.

Its minimum enlisted strength, exclusive of enlisted men for detail, shall be sixty-five.

Its maximum enlisted strength shall be one hundred.

The governor may, upon the recommendation of the major-general, increase the number of corporals to eight and of privates to seventy-six.

A headquarters troop, cavalry, shall consist of:

One captain (regimental quartermaster).

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Two first lieutenants (squadron adjutants).
Service detachment (detailed):
One sergeant.
Twelve wagoners.
Sixteen privates.
Non-commissioned staff:
One regimental sergeant major.
One regimental quartermaster sergeant.
One regimental commissary sergeant.
Two color sergeants.
Band:
One chief musician.
One chief trumpeter.
One principal musician.
One drum major.
Four sergeants.
Eight corporals.
One cook.
Eleven privates.
A machine gun troop, cavalry, shall consist of:
One captain (regimental commissary).
One first lieutenant (squadron adjutant).
Eight sergeants (detailed from troops of the squadrons).
Six corporals (detailed from troops of the squadrons).
Fifty-one privates (detailed from troops of squadrons).

This section was derived from the Military Law of 1908, § 36. It was amended to read as above by L. 1916, ch. 564, § 6.

§ 37. Field artillery. A regiment of field artillery shall consist of:
One colonel.
One lieutenant-colonel.
One captain (adjutant).
One captain (quartermaster).
One captain (commissary).
One chaplain.
Two veterinarians.
One sergeant major.
One quartermaster sergeant.

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One commissary sergeant.
Two color sergeants.
Five mounted orderlies.
One headquarters detachment.
One band.
Two battalions.

The minimum enlisted strength of a regiment of field artillery shall be eight hundred and seventy-seven.

The maximum enlisted strength of a regiment of field artillery shall be one thousand one hundred and twenty-eight.

A battalion of field artillery shall consist of:
One major.
One captain (battalion adjutant).
One first or second lieutenant (battalion quartermaster and commissary).
One sergeant major.
One quartermaster sergeant.
Two mounted orderlies.
Three batteries.

The minimum enlisted strength shall be four hundred and fourteen. In each regiment one battalion quartermaster and commissary shall be a first lieutenant and the other a second lieutenant.

A battery of field artillery shall consist of:
One captain.
Two first lieutenants.
Two second lieutenants.
One first sergeant.
One quartermaster-sergeant.
One stable sergeant.
Six sergeants.
Thirteen corporals (two scouts, one signal detail).
One chief mechanic.
Four mechanics.
Two musicians.
Three cooks.
One hundred and one privates (two with signal detail).

The minimum enlisted strength, exclusive of enlisted men for detail to headquarters detachment, shall be one hundred and thirty-three.

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The maximum enlisted strength, exclusive of enlisted men for detail to headquarters detachment, shall be one hundred and seventy-one.

The governor may, upon the recommendation of the major-general, exclusive of enlisted men for detail to headquarters detachment, increase the number of sergeants in a battery of field artillery to seven (one mess sergeant), of corporals to twenty (two scouts, one signal detail), of mechanics to seven, of musicians to three and of privates to one hundred and twenty-seven.

A headquarters detachment of a regiment of field artillery shall consist of:

One sergeant (scout, regimental detail).

Six corporals (scout, battalion detail).

Nine privates (scouts, three regimental details, six battalion details).

One sergeant (regimental signal detail).

Two corporals (battalion signal details).

Three privates (one regimental, two battalion signal details).

Two mechanics (one as horseshoer and one as saddler, regimental details).

Three musicians (one each regimental and battalion details).

Six drivers (reel carts, two each regimental and battalion details).

These men, consisting of the regimental and battalion details, form the headquarters detachment. They will be detailed from batteries and for that purpose will be additional therein in the grades indicated.

A field artillery band shall consist of:

One chief musician.

One drum major.

One principal musician.

One chief trumpeter.

Four sergeants.

Eight corporals.

One cook.

Eleven privates.

This section was derived from the Military Law of 1908, § 37. It was amended to read as above by L. 1916, ch. 564, § 7.

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§ 38. Coast artillery corps. There shall be a coast artillery corps, which shall belong to the line of the national guard, to consist of two colonels, three lieutenant-colonels, eight majors, forty-one captains, (eight unassigned for staff duty), forty-one first lieutenants, (eight unassigned for staff duty), forty-one second lieutenants, (eight unassigned for staff duty), two chaplains, three sergeants-major, senior grade, four master electricians, eleven engineers, sixteen electrician sergeants, first class, sixteen electrician sergeants, second class, eight sergeants-major, junior grade, eight master gunners, eleven firemen, three bands and thirty-three companies.

A company of coast artillery shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster sergeant, four sergeants, six corporals, two cooks, two mechanics, two musicians, and forty-seven privates.

The minimum enlisted strength of a coast artillery company shall be sixty-five. The maximum enlisted strength of a coast artillery company shall be one hundred and nine.

The governor may, upon the recommendation of the major-general, increase the number of sergeants in a coast artillery company to eight, of corporals to twelve, and of privates to eighty-one.

A coast artillery band shall consist of one chief musician, one chief trumpeter, one principal musician, one drum major, four sergeants, eight corporals, one cook and eleven privates.

For the purposes of administration, drill and instruction the coast artillery corps shall be organized into three coast defense commands. There may be one band for each coast defense command.

The following rated enlisted men shall be allowed:

For each gun company: One plotter; one observer, first class; one observer, second class; two gun commanders; and two gun pointers.

For each mortar company: One plotter; one observer, first class; two observers, second class; and three gun commanders.

For fort commands: Three observers, first class.

For fire commands: Nine plotters; nine observers, first class; eight observers, second class.

The governor in his discretion may increase the strength of the coast artillery hereby authorized. In making such increase the number of additional colonels, lieutenant-colonels, majors, captains, first lieutenants, second lieutenants, sergeants-major (senior

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grade), master electricians, engineers, electrician sergeants first class, electrician sergeants second class, master gunners, sergeants-major (junior grade), and fireman shall be in approximately the same proportion to the number of additional companies organized as is herein prescribed.

This section was derived from the Military Law of 1908, § 38. It was amended to read as above by L. 1909, ch. 370; L. 1911, ch. 795; L. 1916, ch. 564, § 8.

§ 39. Civilian cooks. The governor may authorize the employment of cooks to the number fixed in this chapter in organizations in which there are vacancies in enlisted cooks when such organizations are on duty under his orders or are called upon in aid of the civil authorities. The governor may authorize the employment and prescribe the number of cooks for all headquarteres and organizations for which the enlistment of cooks is not authorized by this chapter. Cooks during such employment shall be subject to the laws and regulations for the government of the national guard and shall receive the same pay as enlisted cooks.

This section was derived from the Military Law of 1908, § 39.

§ 40. Aides. An officer of appropriate grade of any corps, department or arm of the service may be detailed by the governor as an aide to the major-general or to the commanding officer of a brigade. Such a detail may be made as a permanent assignment, in which case it[1] shall create a vacancy in the corps, department or command in which the officer is commissioned and this vacancy may be filled in the manner provided by law; [2]or the detail may be made as a temporary assignment, in which case the detail will create no vacancy and the officer detailed will not thereby be relieved from his usual duties except when actually on duty as an aide. An officer permanently[3] detailed shall be an additional officer in his grade in the corps, department or arm of the service from which he is detailed and he may upon the recommendation of the general officer to whose staff he is detailed be withdrawn at any time from active service and placed upon the reserve[4] list by the governor.

New. Added by L. 1911, ch. 285, and amended to read as above by L. 1915, ch. 358. The amendments are shown in the footnotes. A different section 40 was added by L. 1913, ch. 793.

[1] Words "may be made as a permanent assignment, in which case it," new.
[2] Remainder of sentence new.
[3] Word "permanently" substituted for word "so."
[4] Formerly "supernumerary."

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§ 40. Colored regiment of infantry. Within three months after this section takes effect, the adjutant-general shall organize and equip a colored regiment of infantry in the city of New York. Such regiment when organized and equipped shall become a part of the national guard of the state of New York, and subject to all the statutes, rules and regulations governing such national guard. The officers of such regiment shall be commissioned by the governor, subject to the provisions of this chapter, in relation to eligibility and examination. The armory board of the city of New York shall provide quarters for such regiment.

New. Added by L. 1913, ch. 793. A different section 40 was added by L. 1911, ch. 285.

§ 41. Training detachments. The governor from time to time may organize at places other than the station of a command training detachments of officers and men who shall form a part of such command. The enlisted men of a training detachment shall be enlisted in the companies of the command for which the detachment is formed, and the officers detailed to serve with a detachment shall be selected from the officers of the command for which the detachment is formed. Whenever in the opinion of the major-general a training detachment has an enlisted strength which entitles it to armory accommodations, he may issue a certificate in which he shall state that fact and further that the training detachment is entitled to the armory accommodations of a company. If and when the certificate is approved by the adjutant-general of the state the training detachment to which it relates shall for the purposes of armory accommodations be deemed a company and shall be entitled to the benefits of all the provisions in article nine of this chapter relating to a company. A training detachment may with the approval of the major-general form a civil organization and adopt by-laws and all the provisions of this chapter relating to such associations and their by-laws shall be applicable to such detachments. A training detachment shall receive the allowances authorized for separate companies in section two hundred and sixteen of this chapter. When the amount of one dollar and sixty cents for each enlisted man present for duty at each of the five compulsory drills or parades is allowed a company of which there are enlisted men serving in a training detachment, the proportionate amount of such allowance

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earned by the enlisted men of the detachment shall be deducted from the aggregate allowance of the company and with the fines collected from the enlisted men of the detachment shall be credited to and form part of the military fund of the detachment. The board of audit of a trainng* detachment shall consist of the immediate commanding officer thereof and one other officer serving with the detachment, or if there be not that number available serving with the detachment, the deficiency may be made up by officers of the command for which the detachment is formed detailed for the purpose by the commanding officer of such command.

The word "company," as used in this section, shall include a troop and a battery.

New. Added by L. 1916, ch. 471.

* So in original.

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ARTICLE 3*

The Naval Militia of the State

Section 50. Composition, strength and command.
51. Brigade.
52. Battalions.
53. Divisions.
54. Marine companies.
55. Disbandments.
56. Civilian cooks.
57. Retirement of commissioned officers.
58. Eligibility required to receive a commission in the naval militia.
59. Appointed officer of the naval militia.

§ 50. Composition, strength and command. (1) The organizations forming the naval militia at this date, such others as may be organized hereafter and such persons as may enlist or be appointed or commissioned therein shall constitute the naval militia of this state.

(2) The governor may when in his judgment the efficiency of the naval militia will be thereby increased, create new organizations, and alter, divide, consolidate, annex, disband or reorganize any or all the organizations therein.

(3) The governor shall have power at any time to change the organization of the naval militia herein prescribed, so as to conform to any organization, system of drill or instruction, which may be adopted for the navy of the United States and increase or decrease for that purpose the number of officers, chief petty officers and petty officers in those organizations, and change the designations of officers or enlisted men.

(4) The strength of the naval militia in time of peace shall not

*Article 3, "The Naval Militia of the State," which was derived from the Military Law of 1908, article 3, was amended by L. 1916, ch. 565, "to read as follows." The amending statute has no abstract of contents at the beginning of the article. It does not specifically amend the sections, as sections, of article 3; nor are there section headings to all of the sections. Some of the subjects covered by the 1909 article are omitted from the amended article, and new subjects are introduced, so that, practically, the present article may be regarded as a new article 3 rather than as a section by section amendment of the article. For facility of reference an abstract of contents has been prefixed to this article.

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exceed two thousand enlisted men, but in time of war, invasion, insurrection or imminent danger thereof, the governor shall have power to increase this force beyond said two thousand enlisted men and organize it as the exigencies of the service may require.

This section was derived from the Military Law of 1908, § 50. It was amended to read as above by L. 1916, ch. 565. See also note to abstract of contents of article 3, supra.

Governor as commander in chief of naval forces of state: see CONSTITUTION, art. IV, § 4.

§ 51. Brigade. (1) The naval militia of this state shall constitute a brigade composed of at least twenty-four divisions and marine companies which may be organized into battalions. The brigade shall be commanded by a commodore with the following staff:

One captain, chief of staff.

One lieutenant commander, navigator and signal officer.

One lieutenant commander, gunnery officer.

One lieutenant commander (engineering duties only), engineer officer.

One lieutenant commander, aide (who may be assigned to additional duty as judge advocate).

One surgeon, rank of lieutenant commander, medical officer.

One paymaster, rank of lieutenant commander, paymaster.

One chaplain, rank of commander, chaplain.

(a) The following chief petty officers will be allowed for the headquarters' staff of a brigade:

Three chief yeomen.

Materially amended to read as above by L. 1916, ch. 565. Section 51 of the Military Law of 1909, was entitled "Staff of the Commodore." It was derived from the Military Law of 1908, § 51, and was amended by L. 1911, ch. 282. See also note to abstract of contents of article 3, supra.

§ 52. Battalions. (1) A battalion of eight or more divisions or marine companies shall be commanded by a line officer of not higher grade than captain with the following staff:

One commander, executive officer.

One lieutenant commander, first lieutenant.

One lieutenant commander, navigator.

One lieutenant commander (engineering duties only), engineer officer (for two or more engineer divisions, otherwise lieutenant).

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One lieutenant commander, gunnery officer.

One lieutenant (junior grade), signal officer.

One surgeon, rank of lieutenant commander, medical officer.

One passed assistant surgeon (rank of lieutenant), assistant medical officer.

One assistant surgeon (rank of lieutenant, junior grade), assistant medical officer.

One paymaster (rank of lieutenant commander), paymaster.

One passed assistant paymaster (rank of lieutenant), assistant paymaster.

One assistant paymaster (rank of lieutenant, junior grade), assistant paymaster.

One chaplain (rank of commander), chaplain.

(a) The following chief petty officers and petty officers will be allowed for the headquarters' staff:

One chief master-at-arms.

One chief boatswain's mate.

One chief gunner's mate.

One chief quartermaster.

One chief carpenter's mate.

One chief yeoman.

Seven yeomen (first, second or third class).

One chief commissary steward.

One commissary steward.

Ten ship's cooks or bakers, first class.

Two hospital stewards.

Ten hospital apprentices, first class.

And the following other enlisted men:

One cabin steward,
One cabin cook, } for organizations having a cabin mess.

One mess attendant for each officer of rank of commander or higher.

One wardroom steward.

One wardroom cook.

One mess attendant for every four officers in the battalion.

(b) The following petty officers and enlisted men, not to total more than twenty-three men, will be allowed for the band:

One bandmaster.

First musicians.

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Musicians, first class.

Musicians, second class.

(2) A battalion of four, five, six or seven divisions or marine companies shall be commanded by a line officer of not higher grade than commander with the following staff:

One lieutenant commander, executive officer.

One lieutenant commander (engineering duties only) engineer officer (for two or more engineer divisions, otherwise lieutenant).

One lieutenant, navigator.

One lieutenant, gunnery officer.

One lieutenant, junior grade, signal officer.

One passed assistant surgeon (rank of lieutenant), medical officer.

One assistant surgeon (rank of lieutenant, junior grade), assistant medical officer.

One paymaster (rank of lieutenant), paymaster.

One assistant paymaster (rank of lieutenant, junior grade), assistant paymaster.

One chaplain (rank of lieutenant commander), chaplain.

(a) The following chief petty officers and petty officers will be allowed for the headquarters' staff:

One chief boatswain's mate.

One chief quartermaster.

One chief carpenter's mate.

One chief yeoman.

One yeoman for each division.

One chief commissary steward.

One commissary steward.

One ship's cook or baker for each division.

One hospital steward.

One hospital apprentice, first class for each division.

And the following other enlisted men:

One cabin steward,
One cabin cook, } for organizations having a cabin mess.

One mess attendant.

One wardroom steward.

One wardroom cook.

One mess attendant for every four officers in the battalion.

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(3) The following petty officers and enlisted men, not to total more than seventeen men, will be allowed for the band:

One bandmaster.

First musicians.

Musicians, first class.

Musicians, second class.

(4) A battalion of two or three divisions or marine companies shall be commanded by a line officer of a not higher grade than lieutenant commander with the following staff:

One lieutenant, executive officer.

One lieutenant (engineering duties only), engineer officer.

One lieutenant, junior grade, gunnery and signal officer.

One passed assistant surgeon (rank of lieutenant), medical officer.

One assistant surgeon (rank of lieutenant, junior grade), assistant medical officer.

One passed assistant paymaster (rank of lieutenant), paymaster.

One chaplain (rank of lieutenant), chaplain.

(a) The following chief petty officers and petty officers will be allowed for the headquarters staff:

One chief quartermaster.

One chief carpenter's mate.

One chief yeoman.

One yeoman for each division.

One commissary steward.

One ship's cook or baker for each division.

One hospital steward.

One hospital apprentice, first class for each division.

And the following other enlisted men:

One wardroom steward.

One wardroom cook.

One mess attendant for every four officers in the battalion.

(5) When a battalion has divisions or marine companies located beyond the limits of one city, an additional assistant surgeon with the rank of lieutenant, junior grade will be allowed in each city, but a total of one medical officer for each outlying location shall not be exceeded.

This section was derived from the Military Law of 1908, § 53. It was materially amended to read as above by L. 1916, ch. 565. Section 52 of the

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Military Law of 1909 was entitled "Staff of the Captain" and was derived from the Military Law of 1908, § 52. See also note to abstract of contents of article 3, supra.

§ 53. **Divisions.** (1) A deck division shall consist of forty-eight enlisted men, and may have three officers as follows:

One lieutenant.

One lieutenant, junior grade.

One ensign.

The enlisted strength may be divided as follows:

Not more than six petty officers, first class, one of whom may be made chief petty officer in any of the following ratings:

Chief master-at-arms.

Chief boatswain's mate.

Chief gunner's mate.

Chief quartermaster.

Not more than twelve petty officers, first and second class combined.

Not more than fifteen petty officers, first, second and third class combined.

(a) Of the fifteen petty officers of the seamen branch of a deck division there must be:

Not less than four nor more than nine boatswain's mates and coxswains.

Not less than one nor more than three gunner's mates.

Not less than one chief turret captain or turret captain, first class (only for divisions actually assigned to turrets on a ship assigned to that organization).

(b) Each deck division may enroll as a part of the fifteen petty officers mentioned in paragraph (a) the following petty officers:

Not more than one master-at-arms.

Two quartermasters.

Two yeomen.

One carpenter's mate, first, second or third class.

One sailmaker's mate.

One shipfitter, first or second class.

One plumber and fitter.

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(c) The other enlisted men of the seamen branch and artificer branch (deck force) shall consist of the following ratings:

Thirty-three seamen, ordinary seamen, apprentice seamen or landsmen (for special positions), rated according to efficiency.

(d) In addition, the following enlisted men, who are not petty officers, may be enrolled in each division:

One bugler.

One ship's cook, third or fourth class.

One hospital apprentice.

One shipwright.

(e) A deck division consisting of more than sixty enlisted men may have:

One additional ensign.

One additional petty officer of the seaman branch only, of the first, second or third class, for each additional five enlisted men.

(2) An engineer division shall consist of forty-eight enlisted men, and may have three officers, as follows:

One lieutenant (engineering duties only).

One lieutenant, junior grade (engineering duties only).

One ensign (engineering duties only).

The enlisted strength may be divided as follows:

Three chief machinist's mates.

Three machinist's mates, first or second class.

One chief water tender.

Three water tenders.

Three oilers.

One blacksmith or water tender.

One boilermaker or water tender.

One coppersmith or water tender.

One chief electrician.

Three electricians, first, second or third class.

One electrician (radio), chief, first, second or third class.

One yeoman, first or second class.

One ship's cook, third or fourth class.

(a) The other enlisted men of the artificer branch (engineer force) shall consist of the following ratings:

Twenty-five firemen, first class and second class, coal passers or landsmen (for special positions), rated according to efficiency.

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(b) An engineer division consisting of more than sixty enlisted men may have:

One additional ensign (engineering duties only).

One additional petty officer of the artificer branch (engineer force) of the first, second or third class for each additional five enlisted men.

(c) In a locality where there are insufficient men available to form an engineer division, and there already exists an organized deck division, chief petty officers, petty officers, and other enlisted men of the artificer branch (engineer force) may be additionally enrolled in such deck division, with such ratings as they may be qualified to fill, until such time as there is a sufficient number of them to form a separate engineer division, when such division shall be formed.

(d) In cases where sixteen or more additional enlisted men of the artificer branch (engineer force) are enrolled in a deck division there will be allowed an additional ensign (engineering duties only).

(e) In a locality where there are insufficient men to form an engineer division, an engineer section with one officer and twenty-four enlisted men on its rolls may be organized, but no engineer section shall have less than twenty enlisted men on its rolls. An engineer section will be considered an administrative unit until merged into an engineer division.

(f) The following rank and ratings will be allowed the officer and enlisted men of an engineer section:

One ensign (engineering duties only).

The enlisted strength may be divided as follows:

One chief machinist's mate.

Three machinist's mates, first class.

Three water tenders.

Three oilers.

One boilermaker.

One coppersmith.

(g) The other enlisted men of the artificer branch (engineer force) shall consist of the following ratings:

Twelve firemen, first class and second class, coal passers or landsmen (for special positions), rated according to efficiency.

(3) An aeronautic division shall consist of two aeronautic sections and shall be commanded by an officer of not higher rank than lieutenant commander (aeronautic duties only).

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(a) An aeronautic section shall consist of twenty-three enlisted men, and may have five officers, as follows:

One lieutenant (aeronautic duties only).

Two lieutenants, junior grade (aeronautic duties only).

Two ensigns (aeronautic duties only).

The enlisted strength may be divided as follows:

One chief machinist's mate, chief aeronautic machinist.

One machinist's mate, first class, aeronautic machinist, first class.

One machinist's mate, second class, aeronautic machinist, second class.

Eight electricians, third class (gen.) aeronautic machinist, third class.

One carpenter's mate, second class, aeronautic mechanic, second class.

Eight carpenter's mates, third class, aeronautic mechanic, third class.

One yeoman, third class.

One hospital apprentice.

(b) In a locality where there are insufficient men to form an aeronautic section and there already exists an organized deck or engineer division, an officer and not more than four enlisted men for aeronautic duty only may be additionally enrolled in such divisions until such time as there is a sufficient number of them to form a separate aeronautic section.

(c) In cases where four additional enlisted men of the aeronautic branch are enrolled in a deck or engineer division there will be allowed an additional ensign (aeronautic duties only).

(d) The following additional chief petty officers, petty officers, and other enlisted men of the seamen branch, artificer branch (engineer force), and special branch will be allowed each aeronautical division:

One chief boatswain's mate.

One boatswain's mate, first class.

One yeoman, second class.

One electrician, first class (radio).

One seaman (signalman).

(4) A deck or engineer division consisting of more than eighty enlisted men, or an aeronautic section of more than six officers and

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twenty-eight enlisted men may be maintained only by permission of the commanding officer, naval militia.

(5) The minimum strength of a deck or engineer division or a marine company shall be forty enlisted men; the minimum strength of an aeronautic section shall be one officer and five enlisted men.

This section was derived from the Military Law of 1908, § 54. It was materially amended to read as above by L. 1916, ch. 565. Section 53 of the Military Law of 1909 was entitled "Battalions" and was amended by L. 1911, ch. 282. It was derived from the Military Law of 1908, § 53. See also note to abstract of contents of article 3, supra.

§ 54. Marine companies. (1) A marine company shall consist of forty-eight enlisted men, and may have three officers, as follows:

One captain.
One first lieutenant.
One second lieutenant.
The enlisted strength may be divided as follows:
One first sergeant.
One gunnery sergeant.
Four sergeants.
Five corporals.
One drummer.
One trumpeter.
Thirty-five privates.

(a) For each additional eight privates over thirty-five an additional corporal may be appointed, and for each additional sixteen privates over thirty-five an additional sergeant may be appointed.

(b) For a marine company of more than sixty enlisted men there will be allowed an additional second lieutenant.

(c) In a locality where there are insufficient men available to form a marine company, a marine section with one officer and twenty-four enlisted men on its rolls may be organized, but no marine section shall have less than twenty enlisted men on its rolls. A marine section will be considered an administrative unit until merged into a marine company.

(d) The following rank and ratings will be allowed the officer and enlisted men of a marine section:

One first lieutenant.
One first sergeant.

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Two sergeants.
Three corporals.
One trumpeter.
Seventeen privates.

(e) Whenever a marine company increases in size to twelve squads, it may be divided into two companies.

New. Laws 1916, ch. 565. Military Law of 1909, § 54, related to "Divisions" and was derived from Military Law of 1908, § 54. It was amended by L. 1911, ch. 282, § 3. The subject of that section is now covered by section 53. See also note to abstract of article 3, supra.

§ 55. Disbandments. When a battalion shall fall below two divisions it shall be disbanded. The remaining division shall become a separate division. When a division shall fall below the minimum strength prescribed by law it may be disbanded.

This section was derived from the Military Law of 1908, § 55. It was amended to read as above by L. 1916, ch. 565. The amendment substituted the word "two" in the place of the word "three" in the first sentence, and eliminated the words "Its remaining divisions shall become separate divisions," which constituted the second sentence of the former section.

§ 56. Civilian cooks. The governor may authorize the employment of cooks by troops on duty under his orders or called out in aid of the civil authority, when such troops do not receive cooked rations, and such cooks shall receive as compensation for their services the pay of petty officers, second class, while thus employed, paid in the manner that the officers and enlisted men with whom they are serving are paid, provided such duty be not on vessels of the United States navy, other than in the status of outright loan. The number of cooks that may thus be employed shall not exceed two to a division or company. For the headquarters of a brigade and of a battalion the governor may prescribe the number of cooks that may be employed. All civilian cooks shall be subject while thus employed, to the military law, the articles of war and the regulations as if they were regularly enlisted men of the naval militia.

This section was derived from the Military Law of 1908, § 56. It was amended to read as above by L. 1911, ch. 282, § 4, and L. 1916, ch. 565.

§ 57. Retirement of commissioned officers. A commanding officer of the naval militia, holding the office of commodore may, at his own request, be withdrawn from active service and command and placed upon the retired list by the governor, with rank

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on the retired list of the grade next higher than that held by him in active service, provided he has served not less than twenty-five years in the naval militia, or not less than ten years in the naval militia and fifteen years in the United States navy. Any commissioned officer of the naval militia may be similarly withdrawn and placed upon the retired list with the rank of the grade next higher, provided he served in the regular or volunteer navy of the United States during the war of the rebellion, and has served in the naval militia not less than five years. Any commissioned officer of the naval militia who shall be retired under section eighty-two, upon his own request, shall have rank on the retired list of the grade next higher to that held by him in active service, provided he shall have been an officer in the United States navy in time of war.

This section was derived from the Military Law of 1908, § 57. It was amended to read as above by L. 1909, ch. 233, and L. 1916, ch. 565.

§ 58. Eligibility required to receive a commission in the naval militia. Commissioned officers in the naval militia must be citizens of the United States, and of the age of eighteen years and upwards. No person who has been expelled or dishonorably discharged from any military or naval organization of the State shall be commissioned unless he has re-enlisted and served as provided in this chapter. No person shall be commissioned unless he shall possess the additional requirements herein prescribed for the particular office to which he is to be commissioned.

A commodore shall have been in the active service of a state as a line officer of the naval militia or in the service of the United States as a line officer of the navy or in all combined for at least ten years. A captain of the naval militia at the time of his appointment shall have performed the same service for at least five years. A commander or lieutenant-commander for at least three years. Staff officers of officers below the grade of commodore except judge advocates, medical officers and chaplains must have served one year immediately preceding their appointment in the naval militia of this state, except that they may be credited with service in the United States navy or revenue marine, or if not in active service at the time of their appointment they must have had at least one year's service in the national guard or naval militia of the state or the army or navy of the United States

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or both combined. Staff officers of the commodore, except judge advocates, surgeons and engineers, must either be selected from the commissioned officers in active service in the naval militia of this state, who for one year immediately preceding their appointments have been in active service in such naval militia as commissioned officers, or if not in active service at the time of their appointment they must have had at least two years' previous service in the active militia of this state or in the army or navy of the United States or both combined as a commissioned officer. Surgeons and assistant surgeons must be graduates of an incorporated school of medicine and of at least five years' practice if of the grade of lieutenant-commander; of at least three years' practice if of the grade of lieutenant; and of at least two years' practice if of the grade of lieutenant junior grade. A lieutenant-commander as engineer officer shall have been a commissioned marine engineer in the service of the United States, or shall hold a United States marine license not below the grade of chief engineer of ocean steamers of at least three thousand five hundred tons burthen. A lieutenant and a lieutenant junior grade as engineer officers shall have been a commissioned marine engineer in the service of the United States or shall hold a United States marine license not below the grade of chief engineer of inland steamers of at least one thousand and five hundred tons burthen respectively. Engineer officers who have passed the examination required by the navy department for line officers for engineering duty only in the naval militia and who have actually served on vessels of the navy for one or more naval militia cruises as engineer officers shall be deemed to have complied with the relevant provisions of this section as regards eligibility. A judge-advocate must be a counsellor-at-law of the supreme court of this state of at least five years' standing if of the grade of lieutenant commander or at least three years' standing if of the grade of lieutenant. A chaplain must be a regularly ordained minister of some religious denomination.

This section was derived from the Military Law of 1908, § 58, and was amended to read as above by L. 1916, ch. 538, and became effective May 15, 1916. The section was also amended by L. 1916, ch. 565, which became effective on the same day and date. See note to section 58, infra.

§ 58. Eligibility required to receive a commission in the naval militia. (1) Commissioned officers in the naval militia must be

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citizens of the United States and of the age of eighteen years and upwards. No person who has been expelled or dishonorably discharged from any military or naval organization of the state shall be commissioned unless he has re-enlisted and served as provided in this chapter. No person shall be commissioned unless he shall possess the additional requirements herein prescribed for the particular office to which he is to be commissioned.

(2) A commodore shall have been in the active service of a state as a line officer of the naval militia or in the service of the United States as a line officer of the navy or in all combined for at least ten years. A captain of the naval militia at the time of his appointment shall have performed the same service for at least five years. A commander or lieutenant-commander for at least three years. Staff officers or officers below the grade of commodore except judge advocates, medical officers and chaplains must have served one year immediately preceding their appointment in the naval militia of this state, except that they may be credited with service in the United States navy or revenue marine, or if not in active service at the time of their appointment they must have had at least one year's service in the national guard or naval militia of the state or the army or navy of the United States or both combined. Staff officers of the brigade, except judge advocates, surgeons and engineers, must either be selected from the commissioned officers in active service in the naval militia of this state, who for one year immediately preceding their appointments have been in active service in such naval militia as commissioned officers, or if not in active service at the time of their appointment they must have had at least two years' previous service in the active militia of this state or in the army or navy of the United States or both combined as commissioned officer. Surgeons and assistant surgeons must be graduates of an incorporated school of medicine and of at least five years' practice if of the grade of lieutenant-commander; of at least three years' practice if of the grade of lieutenant; and of at least two years' practice if of the grade of lieutenant junior grade. A lieutenant-commander as engineer officer shall have been a commissioned marine engineer in the service of the United States, or shall hold a United States marine license not below the grade of chief engineer of ocean steamers of at least three thousand five hundred tons burthen. A lieutenant and a lieutenant junior grade as engineer,

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officers shall have been a commissioned marine engineer in the service of the United States or shall hold a United States marine license not below the grade of chief engineer of inland steamers of at least one thousand and five hundred tons burthen respectively. Engineer officers who have passed the examination required by the navy department for line officers for engineering duty only in the naval militia and who have actually served on vessels of the navy for one or more naval militia cruises as engineer officers shall be deemed to have complied with the relevant provisions of this section as regards eligibility. A judge advocate must be a counsellor-at-law of the supreme court of this state of at least five years' standing if of the grade of lieutenant-commander or at least three years' standing if of the grade of lieutenant. A chaplain must be a regularly ordained minister of some religious denomination.

This section was derived from the Military Law of 1908, § 58. It was amended to read as above by L. 1916, ch. 538, and L. 1916, ch. 565. As originally enacted this section had a head, "Eligibility required to receive a commission in the naval militia." The amendments by L. 1916, chs. 538 and 565, both became effective on May 15, 1916. The amendment of chapter 565 differs from the amendment of chapter 538 in the following particulars: The section as amended by chapter 538 has a section heading; the section as amended by chapter 565 is without a heading. The section as amended by chapter 538 is divided into unnumbered paragraphs; the section as amended by chapter 565 is divided into numbered subdivisions. In the amendment by chapter 538 the fifth sentence of the second paragraph begins, "Staff officers of the commodore —"; the fifth sentence of subdivision 2 of the amendment by chapter 565 begins, "Staff officers of the brigade —". The concluding words of the fifth sentence of the second paragraph of the amendment by chapter 538 reads, "or both combined as a commissioned officer"; the concluding words of the fifth sentence of subdivision 2 of the amendment by chapter 565 reads, "or both combined as commissioned officer."

§ 59. Appointed officer of the naval militia. The commodore of the naval militia shall be appointed by the governor. Officers of the naval militia, excepting the commodore, shall be appointed by the governor upon the recommendation of their immediate commanding officers, approved by the commanding officer of the naval militia. When the governor desires to create new organizations he shall have the power in the first instance to appoint all the officers necessary to commence and complete such organization.

This section was derived from the Military Law of 1908, § 59. It was amended to read as above by L. 1911, ch. 282, § 5, and L. 1916, ch. 565.

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ARTICLE 4 *

Commissioned Officers of the National Guard and Naval Militia

Section 70. Commissions.
71. Eligibility required to receive a commission in the national guard.
72. Examinations.
73. Examining board.
74. Appointed officers and non-commissioned officers of the national guard.
75. Elected officers.
76. Elections.
77. Appeal from an election.
78. Oath of office.
79. Brevet commissions.
80. Reserve officers.
80-a. Reserve non-commissioned officers and enlisted men.
81. Resignations.
82. Retirement and discharge.
83. Examination and discharge of officer.
84. Dismissal.
85. Removal.

§ 70. Commissions. All officers shall be commissioned by the governor at his discretion; but no one shall be commissioned unless the conditions set forth in the next two sections have been complied with, and no one shall be recognized as an officer unless he shall have been duly commissioned, and shall have taken the oath of office. Commissions shall be issued to officers in the arm, corps or department of the service of which they are a part and not in any particular regiment or unit. The acceptance of a commission in the militia of this state shall be deemed a resignation by the person accepting the same, of all other commissions held by him in such militia. Nothing herein shall apply to or affect the acceptance and holding of brevet commissions.

This section was derived from the Military Law of 1908, § 70. It was amended to read as above by L. 1916, ch. 473, § 2. The amendment added the second section.

* The title of this article was amended by L. 1911, ch. 99. The change consisted in adding the words "and naval militia."

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Governor to appoint certain military officers: see CONSTITUTION, art. XI, § 4.

Appointment of certain commissioned and non-commissioned officers: see CONSTITUTION, art. XI, § 5.

Commission by governor of commissioned officers: see CONSTITUTION, art. XI, § 6.

Deputies.— It has been held that no officer can appoint a deputy unless specially authorized so to do, particularly where the duties of the station involve trust, confidence, and skill. State v. Buffalo, (1842) 2 Hill 434.

Federal service as affecting commissions.— Commissions of officers are not terminated by the calling out of the militia for service in connection with and under the rules and regulations of the United States army. Op. Atty.-Gen. (1916), reported in 9 St. Dept. Rep. 406.

Cited.— This section was cited in Op. Atty.-Gen. (1908) 297.

§ 71. Eligibility required to receive a commission in the national guard. Commissioned officers must be citizens of the United States and of the age of eighteen years and upwards. No person who has been expelled or dishonorably discharged from any military or naval organization of the state shall be commissioned unless he has re-enlisted and served as provided in this chapter. No person shall be commissioned unless he shall possess the additional requirements herein prescribed for the particular office to which he is to be commissioned. A major-general, at the time of his appointment, must be an officer in active service in the national guard of this state of the grade of brigadier-general or field officer, and for seven successive years immediately preceding his appointment, he must have been in active service in said national guard as a commissioned officer. A brigadier-general, at the time of his appointment, must be an officer in active service in the national guard of this state of the grade of field officer, and in addition, for five successive years immediately preceding his appointment, he must have been in active service in said national guard as a commissioned officer, or he must have been in active service in the national guard of this state as a commissioned officer for a period of fifteen years, ten of which were as a field or general officer, or both combined. A colonel of the coast artillery corps or of a regiment, at the time of his appointment, must either be an officer in active service in the national guard of this state; and for three successive years immediately preceding his appointment, he must have been in active service in said national guard as a commissioned officer; or if not in active service at the time of appointment he must have had prior service of at least six years in the national guard of this

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state, or in the army of the United States, or in both combined, as a commissioned officer. A lieutenant-colonel and major of the line, at the time of his appointment, must either be an officer in active service, and for two successive years immediately preceding his appointment, he must have been in active service in the national guard of this state, as a commissioned officer, or if not in active service at the time of appointment, he must have had prior service of at least six years in the national guard of this state, or in the army of the United States, or in both combined, as a commissioned officer. Captains and lieutenants of regiments, battalions, squadrons, the corps of engineers and the coast artillery corps not elected by the members of the troops, batteries or companies and available and required for staff duty with the organization and appointed as prescribed in section seventy-four, must have served one year immediately preceding their appointments, in the national guard or naval militia of this state, as the case may be, or if not in active service at the time of their appointment, they must have had at least one year's service in the national guard or naval militia of the state or the army or navy of the United States, or both combined. Officers of the corps of engineers, the signal corps, the adjutant-general's department, the inspector-general's department, the quartermaster's department, the subsistence department and the ordnance department above the grade of captain must possess the same requirements as officers of the line of the same respective grades. Officers of such corps and departments of or below the grade of captain must have served one year immediately preceding appointment in the national guard or naval militia of the state or if not in active service at the time of appointment they must have had at least one year's service in the national guard or naval militia of the state or the army or navy of the United States or both combined. An officer of the judge-advocate-general's department must be a counselor-at-law of the supreme court of this state of at least ten years' standing if of the grade of lieutenant-colonel, of at least five years' standing if of the grade of major. An officer of the medical corps must be a graduate of an incorporated school of medicine and of at least ten years' practice if of the grade of lieutenant-colonel; of at least five years' practice if of the grade of major; of at least three years' practice if of the grade of captain; and of at least one year's practice if of the grade of

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first lieutenant. An officer of the signal corps must have a knowledge of signaling, telegraphy, topography and map making. A chaplain must be a regularly ordained minister of some religious denomination. [*Amended by L.* 1909, *ch.* 371.]

This section was derived from the Military Law of 1908, § 71. It was amended to read as above by L. 1909, ch. 371.

Captain as eligible to office of sheriff.—A captain of the national guard elected to the office of sheriff, on accepting the office, is deemed to have resigned and is relieved from duty as captain, as the duties of the two offices seem to be conflicting and inconsistent. Op. Atty.-Gen. (1908) 297.

Cited.— In Op. Atty.-Gen. (1915) 22, this section was cited as bearing on the power to grant commissions to assistants to the adjutant-general. See supra, § 18, note.

§ 72. Examinations. Before being commissioned, every officer must have passed a satisfactory examination before a board as to his knowledge of military or naval affairs and general knowledge and fitness for the service, and any one failing to pass such examination shall not be eligible for an office in the militia of the state for the period of one year from the date of such failure. Judge advocates and medical officers shall be examined as to their general and professional knowledge and fitness for the service only. The following are exempt from examination: general officers, the commodore or captain of the naval militia, officers who within thirty days after their discharge or the expiration of their respective term of office, are reappointed to the position they previously held; chaplains and those mentioned in section one hundred and two of this chapter.

This section was derived from the Military Law of 1908, § 72.

Cited.— In Op. Atty.-Gen. (1915) 22, this section was cited as bearing on the power to grant commissions to the adjutant-general's assistants. See supra, § 18, note.

§ 73. Examining board. Boards of examination under the preceding section shall be appointed by the governor or caused by him to be appointed for the national guard by the major-general, for the naval militia by the commodore or captain as the case may be. Such boards shall consist of not less than three officers, and shall have the same power to take evidence, administer oaths and compel witnesses to attend and testify and produce books and papers and punish their failure to do so, as is possessed by a general court-martial.

When returns of appointments or proceedings of election are

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received by a board, the persons appointed or elected shall by it be ordered before it for examination, and the result of the examination with all the papers in the case, shall be forwarded to the officer ordering the board.

This section was derived from the Military Law of 1908, § 73.

§ 74. Appointed officers and noncommissioned officers of the national guard. The major-general of the national guard shall be appointed by the governor with the consent of the senate; during the time that the senate is not in session, the governor may make such appointment, subject to subsequent confirmation by the senate. The adjutants-general of the grade of lieutenant-colonel shall be appointed upon the nomination of the major-general, and one adjutant-general of the grade of major shall be appointed upon the nomination of the commanding officer of each brigade. The inspectors-general of the grade of lieutenant-colonel shall be appointed upon the nomination of the major-general, and one inspector-general of the grade of major shall be appointed upon the nomination of the commanding officer of each brigade. The judge-advocate of the grade of lieutenant-colonel shall be appointed upon the nomination of the major-general, and one judge-advocate of the grade of major shall be appointed upon the nomination of the commanding officer of each brigade. The deputy quartermaster-general of the grade of lieutenant-colonel shall be appointed upon the nomination of the major-general; one quartermaster of the grade of major shall be appointed upon the nomination of the commanding officer of each brigade, and the post quartermaster-sergeants shall be appointed and warranted by the major-general upon the nomination of the commanding officer of the post for which they are appointed. The deputy commissary-general of the grade of lieutenant-colonel shall be appointed upon the nomination of the major-general; one commissary of the grade of major shall be appointed upon the nomination of the commanding officer of each brigade, and the post commissary sergeants shall be appointed and warranted by the major-general upon the nomination of the commanding officer of the post for which they are appointed. One lieutenant-colonel of the corps of engineers shall be appointed on the nomination of the major-general and one major of the corps of engineers shall be appointed on the nomination of the commanding officer of each brigade. One

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signal officer of the grade of major shall be appointed upon the nomination of the commanding officer of each brigade. Lieutenants assigned to companies of the signal corps shall be appointed upon the nomination of their immediate commanding officers. All other officers of the signal corps shall be appointed upon the nomination of the major-general. The lieutenant-colonel and one major in the ordnance department shall be appointed upon the nomination of the major-general; one major in the ordnance department shall be appointed upon the nomination of the commanding officer of each brigade; one captain and one first lieutenant in the ordnance department and one ordnance sergeant shall be appointed upon the nomination of the commanding officer of each regiment; and one first lieutenant in the ordnance department and one ordnance sergeant shall be appointed upon the nomination of the commanding officer of each separate squadron and separate battalion; and one ordnance sergeant shall be appointed upon the nomination of the colonel of the corps of engineers and each colonel of the coast artillery corps. The lieutenant-colonel, one major and one captain in the medical corps shall be appointed upon the nomination of the major-general. One major in the medical corps shall be appointed upon the nomination of the commanding officer of each brigade. One major and three first lieutenants in the medical corps shall be appointed upon the nomination of each colonel of the coast artillery corps, the colonel of the corps of engineers and the commanding officer of each regiment; two first lieutenants in the medical corps shall be appointed upon the nomination of the commanding officer of each separate squadron and battalion; one first lieutenant in the medical corps may be appointed upon the nomination of the commanding officer of each separate battery, separate troop, separate company and company of signal corps; and four first lieutenants in the medical corps shall be appointed upon the nomination of the commanding officer of each field hospital; four first lieutenants in the medical corps shall be appointed upon the nomination of the commanding officer of each ambulance company. First lieutenants in the medical corps shall be promoted to the grade of captain after three years' service as commissioned officers in the medical corps or in the medical department or in the United States army or in any two or all of them combined, but not until they shall have passed the required examination; and should any

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first lieutenant neglect or refuse to appear for examination when notified to do so or fail to pass a satisfactory examination for promotion to the grade of captain in the medical corps he shall thereupon be withdrawn from active service and placed upon the retired list by the governor. The governor may appoint chaplains as follows: one for each regiment of cavalry, field artillery and infantry upon the nomination of its commanding officer; one for the corps of engineers upon the nomination of its colonel; one for each twelve companies of coast artillery upon the nomination of the officer commanding the artillery district in which such chaplain is to serve. Captains and lieutenants of regiments, battalions, squadrons, the corps of engineers and the coast artillery corps not elected by members of the troops, batteries or companies and required for staff duty with the organizations or corps shall be appointed by the governor upon nomination as follows: in the case of regiments, battalions and squadrons by the commanding officer thereof; in the case of the corps of engineers by its colonel; in the coast artillery corps by the officer commanding the artillery district in which they are to serve. When the governor desires to create new organizations he shall have the power in the first instance to appoint all the officers necessary to commence and complete such organizations. Upon the request in writing of two-thirds of the officers of a regiment, a battalion or squadron not part of a regiment, of the corps of engineers serving with the organized battalions, or of a coast artillery district who are entitled to vote for field officers, and in case of a separate troop, battery, company, or division not part of a regiment, battalion or squadron of two-thirds of its line officers, the governor shall thereafter until such request is withdrawn by a like request in writing, fill any vacancies then existing or which may thereafter occur among the elective officers of such regiment, battalion or squadron, not a part of a regiment, corps of engineers, coast artillery district, separate troop, battery or division, by appointment. An officer appointed pursuant to the provisions of this section, shall be appointed upon the nomination of his immediate commanding officer approved by the immediate superior commanding officer of the officer making such nomination.

This section was derived from the Military Law of 1908, § 74. It was amended to read as above by L. 1909, ch. 371, and L. 1911, ch. 99, § 2.

Appointment of officers of new organization.— When a new organization is created under this section, the Governor has the right to appoint the officers,

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although all are not appointed at the formation of the organization. Op. Atty.-Gen. (1900) 173.

Cited.— This section was merely cited in Matter of Kirby, (1912) 76 Misc. 313, 134 N. Y. S. 905.

§ 75. Elected officers. Brigadier-generals shall be chosen by the field officers of the line of the brigade and the commanding officers of separate troops, batteries and separate companies, not part of a regiment, battalion or squadron, but in such brigade, or may be appointed by the governor whenever he shall so determine and direct. If any vacancy or vacancies exist in the position of field officer of the line, the ranking company or troop commander or commanders of the organization in which the vacancy or vacancies exist, shall be entitled to vote. Colonels, lieutenant-colonels and majors, commanders, lieutenant-commanders, navigating lieutenants and gunnery officers of battalions of the naval militia, except as otherwise provided in section fifty-nine, shall be elected by the field officers of the line, and the commissioned officers of the companies or divisions, of the regiment, battalion or squadron not part of a regiment.

A colonel, lieutenant-colonel and four majors of the coast artillery corps in each artillery district and the colonel, one lieutenant-colonel and three majors of engineers shall be elected by the officers of the companies assigned to the same district, post or armory and the colonel, lieutenant-colonel and majors on duty thereat. Captains and lieutenants and ensigns of troops, batteries, companies, and divisions, shall be elected by the members of the respective troops, batteries, companies or divisions, who shall have performed during the period of their membership, not exceeding twelve months preceding the election at least seventy per centum of the duty required of their troop, battery, company or division and who shall not be indebted at the time to the civil association of such troop, battery, company or division, organized as provided in this chapter.

This section was derived from the Military Law of 1908, § 75.

§ 76. Elections. The major-general shall issue orders for the election of a brigadier-general when the governor directs. Commanding officers of brigades shall issue orders for the election of

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colonels of regiments and majors of battalions not part of regiments; the commodore or captain of the naval militia shall issue orders for the election of commanders of battalions.

Colonels of regiments, the colonel of the corps of engineers, each colonel of the coast artillery corps and majors of battalions and squadrons not part of regiments, and commanders of battalions of the naval militia, shall issue orders for elections to fill all other vacancies, to be filled by election, that may exist in their respective commands, corps or districts. For the election of the colonel of the corps of engineers or a colonel of the coast artillery corps, majors of battalions of field artillery and squadrons not part of regiments and of officers of separate troops, separate batteries, separate companies and divisions, orders shall be issued by the major-general, the respective brigade commanders or the commodore or captain of the naval militia, as the case may be.

The officer ordering an election shall detail an officer to preside thereat and shall give or cause to be given at least five days' notice to all the qualified voters when and where and for what office the election is to take place. Such notice shall be served on the persons entitled to vote at such election in the same manner as warnings for duty are given. The person or persons serving such notice shall make return of the persons notified and of the manner of service. The return, if made by a commissioned officer, shall be authenticated by his certificate on honor; if by a non-commissioned officer, by the oath of the person making such service. The oath may be administered by any person authorized to take the acknowledgment of deeds or by any commissioned officer, and such return shall be presented to the officer directed to preside at such election before the polls for such election shall be opened.

The commanding officer of the organization in which such election is held shall before the polls are opened present to the officer directed to preside, a list of the persons qualified to vote thereat and a list of persons disqualified with a statement of the facts constituting such disqualification. If such disqualification shall be caused by the nonpayment of indebtedness, it may be removed by the payment of such indebtedness at any time before the polls shall be closed.

At the time fixed for the election, the officer ordered to preside thereat, or in his absence an officer authorized by him to act for

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him, or in the absence of such an officer, the commissioned officer highest in rank of those present, shall announce the purpose in hand and open the polls. If it shall happen at any election that legal notice has not been given to all the persons entitled to vote thereat, the presiding officer shall adjourn the meeting and cause such notice to be given; but the presence of a person entitled to vote at any election shall be deemed a waiver of his right to take exception to the want of legal notice to him.

If any person offering to vote at any election shall be challenged as unqualified, by any person entitled to vote thereat, the presiding officer shall declare to the person so challenged the qualifications of an elector, and if he shall state himself duly qualified, and the challenge shall not be withdrawn, the presiding officer shall examine him under oath and determine as to his qualifications as such elector.

As soon as all the electors have cast their votes, or at the expiration of one hour from the opening of the polls, the presiding officer shall declare the polls closed and at once publicly canvass the votes and declare the result of the election. A majority of the votes of all persons present voting at an election shall be necessary to a choice. The presiding officer shall forthwith notify the person elected in writing of his election.

If a person elected at any such election shall not, within ten days after being notified of his election, signify his acceptance to the presiding officer, he shall be considered as declining the office to which he shall have been chosen and a new election be held.

Should there be no choice, the presiding officer shall adjourn the meeting to a reasonable date, and at that meeting open the polls, for another election, and if such second meeting result in no choice, the governor shall be notified and may then fill the vacancy by appointment. The presiding officer shall forward the proceedings of an election in such manner as provided in the regulations issued under this chapter.

This section was derived from the Military Law of 1908, § 76.

Voting by members in default as to dues.— Election of captain in national guard is not void because members of company have not paid dues where by common consent such dues have been waived for several years. Op. Atty.-Gen. (1903) 369.

§ 77. Appeal from an election. Every person thinking himself aggrieved by the proceedings at an election, may appeal to the

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governor, by filing at the time of the election with the presiding officer thereat notice of such intended appeal and forwarding a full statement of the grounds of such appeal within ten days from the date on which the election took place.

The governor may direct upon such appeal, an officer to take testimony in the case, and to report his findings, and such officer shall have the same power to take evidence, administer oaths, issue subpœnas and compel witnesses to attend and testify, and produce books and papers and punish their failure to do so, as is possessed by a general court-martial.

This section was derived from the Military Law of 1908, § 77.

§ 78. Oath of office. Every officer duly commissioned shall, within ten days after his commission is tendered to him, or within ten days after he shall have been notified personally or by mail that the same is held in readiness for him by a superior officer, take and subscribe the constitutional oath of office. Such oath shall be taken and subscribed before an officer authorized by law to administer an oath or some general or field officer or an officer who shall hold the assimilated grade of a field officer, who has taken the oath himself and who is hereby authorized to administer the same. In case of neglect or refusal to take and subscribe such oath within the time mentioned, such commission shall be canceled by the governor and a new appointment shall be made or a new election shall be ordered to fill the vacancy.

This section was derived from the Military Law of 1908, § 78.
Official oaths generally: see PUBLIC OFFICERS LAW, § 10.
Acting in public office without having qualified: see PENAL LAW, § 1820.

§ 79. Brevet commissions. The governor may, upon the recommendation of their commanding officers, confer brevet commissions of a grade next higher than the ordinary or brevet commissions ever held by them, upon officers of the national guard and of the naval militia in active service for gallant conduct or meritorious service of not less than twenty-five years. He may also confer upon officers in active service in the active militia, who have previously served therein in a higher grade, or who have previously served in the forces of the United States in time of war, brevet commissions of a grade equal to the highest grade in which they previously served. Such commissions shall carry with

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them only such privileges or rights as are allowed in like cases in the military and naval service of the United States.

This section was derived from the Military Law of 1908, § 79. It was amended to read as above by L. 1909, ch. 371.

§ 80. Reserve officers. There shall be a reserve list for commissioned officers who have served in the active militia. This list shall include those commissioned officers who are lawfully carried on the reserve list at the date this act takes effect and such others as may be placed thereon in accordance with the provisions of this chapter. Any officer of the active militia on active duty may be placed by the governor on the reserve list on his own request approved by his intermediate commanding officers.. Any person who has served as aide to the governor during the ten years last passed; or as a commissioned officer in the active militia, or as a commissioned officer of the army, navy or marine corps of the United States, and who has been honorably discharged therefrom may be commissioned and placed upon the reserve list by the governor with the highest rank previously held by him after passing an inspection and such examination as the governor may deem necessary. The governor may cause the officers on the reserve list to be inspected and examined by an examining board organized pursuant to this chapter whenever he shall deem it necessary so to do. Notice of the time, place and scope of such inspection and examination shall be mailed to such reserve officer at his last known address not less than six weeks prior to the date thereof and an officer failing to appear or to pass such inspection and examination may, upon the findings of such board, be placed upon the retired list or be discharged in accordance with his previous service and the privileges thereof. Time spent on the reserve list, shall not be credited to an officer in the computation of seniority, pay, length of service or the privileges and exemptions pertaining thereto. Resignations, retirements and discharges of officers on the reserve list shall be made in the same manner as provided by this chapter, for officers on active duty. Officers of the active militia who shall be rendered surplus by reduction or disbandment of organizations or by the abolishing of their office or in any manner provided by this chapter, shall be withdrawn from active duty and placed upon the reserve list. The governor may upon the recommendation of the commanding officer of the

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national guard or of the naval militia respectively detail officers on the reserve list for active duty, in which case they shall rank in their grade from the date of such detail and the governor may return them to the reserve list at his discretion. An officer on the reserve list shall not be detailed to active duty for more than ninety days until he has passed the examination prescribed for the office to perform the duties of which he is detailed.

This section is in part derived from the Military Law of 1908, § 80. In that law the section related to "Supernumerary and retired officers." It was amended by L. 1909, ch. 371; L. 1911, ch. 284, and L. 1914, ch. 191. By the last cited amendment the section heading was changed to "Reserve officers," and the supernumerary list was abolished, commissioned officers rendered surplus by any cause being placed on the reserve list. Under its new title and application the section was amended to read as above by L. 1915, ch. 460, and L. 1916, ch. 568, § 5.

Assigning reserve officer to active duty.— Under this section the governor is permitted to reassign any retired officer to active duty. Matter of Kirby, (1912) 76 Misc. 313, 134 N. Y. S. 905.

Status of officer of disbanded company.— Where a company has been disbanded by the governor, the captain of the company has still his office, but necessarily only as a supernumerary. He is without a command. As such, his name should not be kept on the roll with the officers in the discharge of active duties. People v. Camp, (1891) 62 Hun 623 mem., 42 N. Y. St. Rep. 314, 17 N. Y. S. 397. The deprivation of an officer of command is not a removal from office. The officer rendered supernumerary by the disbandment of the organization in which he holds command, does not thereby lose his rank or commission. He is relieved from active service until he shall be assigned to duty again by the commander-in-chief or is appointed or elected to another command. The constitution prohibits a removal of an officer from office except in the method prescribed. But an officer, so long as he retains his commission retains his office. People v. Hill, (1891) 126 N. Y. 497, 27 N. E. 789, affirming 59 Hun 624 mem., 13 N. Y. S. 637, 13 N. Y. S. 186.

Status of private in disbanded company.— Enlisted men, discharged by reason of consolidation or the disbandment of the organization of which they are members fall back into the general body of citizens as part of the reserve militia of the state and unless re-enlisted the time of their prior service if less than five years is not counted in determining a claim to exemption from military or jury duty. People v. Hill, (1891) 126 N. Y. 497, 27 N. E. 789, affirming 59 Hun 624 mem., 13 N. Y. S. 637, 13 N. Y. S. 186.

§ 80-a. Reserve noncommissioned officers and enlisted men. There shall be a reserve list for noncommissioned officers and enlisted men of the active militia. The governor may place on this list any of the following persons on their own request; any noncommissioned officer and any enlisted man of the active militia on active duty with the approval of the commanding officer of his organization and in case it is part of a brigade by the commanding officer thereof and in all cases by the major general and any person who has served in the active militia as a noncommissioned

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officer or enlisted man and been honorably discharged therefrom. A person who applies to be placed on this list must agree to remain thereon and be subject to the provisions of this chapter for five years unless sooner discharged by the governor, and he may be required to be examined physically and otherwise in such manner as the governor may determine both before being placed on this list and from time to time thereafter. Time spent on this list shall not be credited to a person thereon in the computation of seniority, pay, length of service or the privileges and exemptions pertaining thereto. Persons on this list may be transferred by the governor to depot units and may be returned by him to this list in his discretion and shall enjoy a preference in the formation of such units as in this chapter in such case is provided.

New. Added by L. 1915, ch. 330.

§ 81. Resignations. A commissioned officer tendering his resignation before having served five years, if the governor accept it, shall receive an honorable discharge; if he has served five years or more, he shall receive a full and honorable discharge; provided he shall not be under arrest or returned to a military court for any deficiency, or delinquency, and provided further he be not indebted to the state in any manner, and that all his accounts for money or for public property be correct. In computing the time served, service as an enlisted man shall be allowed, and the service is not required to be continuous. If the governor accept the resignation of an officer, who at the time shall be under arrest, under charges or returned to a military court for any offense, deficiency or delinquency, such officer shall then cease to be an officer of the militia, and shall receive a discharge in such form as the governor shall direct, nor shall he be again eligible to receive a commission unless he first re-enlist, as provided in this chapter in the case of enlisted men dishonorably discharged, and until he shall have performed at least seventy per centum of duty in each year under such enlistment for two successive years.

This section was derived from the Military Law of 1908, § 81.

§ 82. Retirement and discharge. Any officer of the active militia who has reached the age of sixty-four years shall be placed upon the retired list by the governor. Any commissioned officer who shall have served in the same grade for the continuous period

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of ten years, or in the military or naval service of the state as a commissioned officer for fifteen years, or in the case of an officer of the naval militia retiring such service may have been in the naval service of the state and the United States combined for fifteen years, provided at least ten years of such service shall have been in the state, may, upon his own request, be placed upon the retired list and withdrawn from active service and command by the governor. Any commissioned officer who has become or shall hereafter become disabled, and thereby incapable of performing the duties of his office, shall be withdrawn from active service and command and placed on the retired list. Any commissioned officer who has become, or who shall hereafter become unfit or incompetent, and thereby incapable of performing the duties of his office, shall be discharged upon the recommendation of his commanding officer or the recommendation of an inspecting officer. Such retirement or discharge shall be by order of the governor, and in either case shall be subject to the provisions of this section. Before making such order, a board of not less than five commissioned officers, one of whom shall be a surgeon, shall be appointed, whose duty it shall be to determine the facts as to the nature and cause of incapacity of such officer as appears disabled or unfit, or incompetent, from any cause, to perform military service, and whose case shall be referred to it. No officer, whose grade or promotion would be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decision of the board in such case. Such board is hereby invested with the powers of courts of inquiry and courts martial, and whenever it finds an officer incapacitated for active service, shall report such fact to the governor, stating cause of incapacity, whether from disability, unfitness, or incompetency, and if he approves such finding, such officer shall be placed on the retired list or discharged, as provided in this article. The members of the board shall, before entering upon the discharge of their duties, be sworn to an honest and impartial performance of their duties as members of such board. No officer shall be placed upon the retired list or discharged by the action of such board, without having had a fair and full hearing before the board, if upon due notice he shall demand it. It shall not be necessary to refer any case for the action of such board arising under this section, unless the officer designated to be placed upon

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the retired list or discharged, shall within twenty days after being notified that he will be so retired or discharged, serve on the adjutant-general of the state a notice in writing that he demands a hearing and examination before such board. Boards for the national guard shall be appointed by the governor for officers above the grade of colonel, and by the major-general for officers below the grade of brigadier-general; boards for the naval militia shall be appointed by the governor, and shall be composed of officers of such grade or rank as he may determine. The governor may withdraw from active service and command and place upon the retired list any officer who has been twenty-five years in the active service of the national guard, on the recommendation of the commanding officer of his organization, the commanding officer of the brigade, and the major-general, and in the case of officers of the corps of engineers and the coast artillery corps and officers of staff corps and departments, upon the recommendation of the major-general. Vacancies created by the operation of this section shall be filled in the same manner as other vacancies. The governor may in his discretion detail officers from the retired list to active duty and return them to such list in his discretion provided that officers retired for age shall not be detailed to command troops but only to perform duties of staff corps or departments or to sit on military courts or boards.

This section was derived from the Military Law of 1908, § 82. It was amended to read as above by L. 1911, ch. 464; L. 1911, ch. 770; L. 1916, ch. 470.

Purpose.— The legislative provision with reference to retirement from active duty in the military service at the same age as is provided in the federal service seems to look in the direction of the highest efficiency for a most important arm of the government, which must be composed of men not only mentally and morally qualified and equipped but physically able to defend and protect the interests and property of the people. Matter of Kirby, (1912) 76 Misc. 313, 134 N. Y. S. 905.

Mandatory nature of section.— "While the original enactment of the Statute read 'may' be placed upon the retired list by the governor, and by the enactment of Chapter 770, of the Laws of 1911, the word 'shall' was substituted for the word 'may.' This section is therefore automatic in its operation and directs and compels the governor of the State to retire an officer of the active militia who has reached the age of sixty-four years and place his name upon the retired list. The governor has no option. The action is mandatory." Matter of Kirby, (1912) 76 Misc. 313, 134 N. Y. S. 905.

Judicial review.— The retirement of a commissioned officer under this section is not such an interference with his constitutional rights as will justity a court to grant a peremptory writ of mandamus compelling the military authorities to recognize him as an officer on the active list of the national guard. Matter of Kirby, (1912) 76 Misc. 313, 134 N. Y. S. 905.

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§ 83. Examination and discharge of officer. The governor may, whenever he may deem that the good of the service requires it, order any commissioned officer before a board of examination, to consist of not less than three nor more than five general or field officers, which is hereby invested with the powers of courts of inquiry and courts-martial, and such board shall examine into the moral character, capacity and general fitness for the service, of such commissioned officer, and record and return the testimony taken and a record of its proceedings. If the findings of such board be unfavorable to such officer and be approved by the governor, he shall be discharged from the service. No officer whose grade or promotion would in any way be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decision of the board in such case. Failure to appear when ordered before a board constituted under this section, shall be sufficient ground for a finding by such board that the officer ordered to appear be discharged. An officer discharged under the provisions of this section shall not be eligible for election or appointment as a commissioned officer in the militia, unless he first re-enlists as provided in the case of enlisted men dishonorably discharged, and until he shall have performed at least eighty per centum of duty in each year after such enlistment for three successive years.

This section was derived from the Military Law of 1908, § 83.

Nature of jurisdiction.—A board of examination is not one of the four military courts created under the military code, called courts of inquiry, general courts-martial, garrison courts, martial and delinquency, but it has the powers of the two courts first named with the same organization and method of procedure. While its jurisdiction is different, it has the same power, so far as its jurisdiction extends, just as the County Court has the power of the Supreme Court upon the trial of an action that it can try at all. People v. Hoffman, (1901) 166 N. Y. 462, 60 N. E. 187, 54 L. R. A. 597, reversing (1900) 55 App. Div. 260, 66 N. Y. S. 884. Section 130 of the present Military Law has provision for five classifications of courts, having added summary courts as the fifth.

Judicial review.—As an examining board has the same power to try and decide as a court martial, although for different offenses and its judgment may be the sole authority for the removal of a commissioned officer elected or appointed for life, if the judgment of a court martial can be renewed upon certiorari, the determination of a board of examination can be reviewed in the same way. The Supreme Court has power to issue a writ of certiorari to review the determination of a board of examination under this section. People v. Hoffman, (1901) 166 N. Y. 462, 60 N. E. 187, 54 L. R. A. 597, reversing 55 App. Div. 260, 66 N. Y. S. 884.

Right to counsel.— In proceedings before a board of examination "to examine into the moral character, capacity and general fitness" of a non-commissioned officer, he is entitled to counsel, and denial of his request so

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to be represented is ground for reversal in certiorari. People v. Phisterer, (1901) 66 App. Div. 52, 73 N. Y. S. 124. Express provision is now made for representation by counsel before military courts. See infra, § 151.

Duty to decide according to evidence.—A board of examination "is not clothed with arbitrary discretion to act without evidence or against law, but is a body of military officers of high rank each sworn to faithfully try and determine according to evidence and to administer justice according to law. These functions are not ministerial or legislative, but judicial in character." People v. Hoffman, (1901) 166 N. Y. 462, 60 N. E. 187, 54 L. R. A. 597, reversing 55 App. Div. 260, 66 N. Y. S. 884.

Trial as jeopardy.— If one officer of the national guard while in active service feloniously killed another officer and a court martial should find him guilty of "Conduct unbecoming an officer and a gentleman," and punish him by "dismissal from the service," it would be a shock to the moral sense to hear it seriously urged that because of a "former conviction" he could not be tried and punished for "murder." People v. Wendel, (1908) 59 Misc. 354, 112 N. Y. S. 301.

Prohibition to restrain action.—A writ of prohibition, to prohibit the board of examination from receiving in evidence certain proceedings of a court of inquiry before which the officer has been tried, will not be sustained. People v. Doyle, (1899) 28 Misc. 411, 59 N. Y. S. 959, affirmed 44 App. Div. 402, 60 N. Y. S. 1088, (1900) 162 N. Y. 659, 57 N. E. 1122. The courts have no power to prohibit the governor from exercising his authority in approving or disapproving the findings of the board of examination on the testimony taken and returned to him. People v. Doyle, (1899) 44 App. Div. 402, 60 N. Y. S. 1088, affirmed (1900) 162 N. Y. 659 mem. But see People v. Hoffman, (1901) 166 N. Y. 462, 60 N. E. 187, 54 L. R. A. 597.

Cited.— This section was cited in Walker v. Maxwell, (1902) 68 App. Div. 196, 74 N. Y. S. 94.

§ 84. Dismissal. An officer who shall have been absent without leave for a period of six months or more shall be dismissed by the governor.

This section was derived from the Military Law of 1908, § 84.

§ 85. Removal. A commissioned officer can not be removed from office without his consent, except by the senate upon the recommendation of the governor, the sentence of a general court-martial, or as provided in this chapter.

This section was derived from the Military Law of 1908, § 85.

Removal of commissioned officer: see CONSTITUTION, art. XI, § 6.

Removal by governor.— "With all his power as commander-in-chief, the Governor cannot remove a commissioned officer of the National Guard, in time of peace without the findings of an examining board, except for absence without leave, although the senate may remove upon his recommendation." People v. Hoffman, (1901) 166 N. Y. 462, 60 N. E. 187, 54 L. R. A. 597.

Cited.— This section was stated in Matter of Kirby, (1912) 76 Misc. 313, 134 N. Y. S. 905.

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ARTICLE 5

Enlisted Men of the National Guard and Naval Militia

Section 95. Enlistments.
96. Re-enlistments.
97. Enlistment papers.
98. Transfers.
99. Non-commissioned staff and chief petty officers; non-commissioned and petty officers.
100. Dropping from the rolls.
101. Taking up from dropped.
102. Retirement.
103. Discharges.
104. War service.

§ 95. Enlistments. An able-bodied man of good character, who can read and write and who is a citizen of the United States or has declared his intention to become such may be enlisted in the national guard or naval militia of this state for a term of three years and until discharged as hereinafter provided. Chief and principal musicians, privates of the hospital corps, musicians, machinists and electricians of all ratings in the naval militia, may be enlisted as such. No man shall be enlisted who holds a commission in the militia of this state. No man shall be enlisted who is forty-five years and more of age, except, where the enlistment is in the national guard, a man who has been honorably discharged after service of at least three years as an enlisted man in the national guard of another state or of the District of Columbia or in the army or marine corps of the United States and except, where the enlistment is in the naval militia, a man who has been honorably discharged after at least three years' service in the naval militia of another state or of the District of Columbia or in the navy or marine corps of the United States. No man shall be enlisted who is less than eighteen years old, except that men who are sixteen years and more of age may be enlisted as musicians. No minor shall be enlisted without the written consent of his parent or guardian. A man who has been dropped because he cannot be found or expelled or dishonorably discharged, or discharged without honor, from any military or naval

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organization of the state shall not be eligible for enlistment or re-enlistment unless he produce the written consent to such enlistment of the commanding officer of the organization from which he was dropped or expelled or dishonorably discharged, or discharged without honor, and of the commanding officer who approved such expulsion or issued such discharge or upon whose order he was dropped. Men who have been discharged by reason of disbandment may be enlisted and shall then receive credit for the period served at the time of such disbandment. A man discharged for physical disability shall if such disability ceases, and he again enlists, or a man discharged upon his own request shall, if he again enlists, receive credit for the period served prior to such discharge.

This section was derived from the Military Law of 1908, § 95. It was amended to read as above by L. 1909, ch. 369; L. 1911, ch. 100, § 1; L. 1912, ch. 68; L. 1914, ch. 160, § 1; L. 1915, ch. 82.

Power of legislature to provide for enlistment: **see CONSTITUTION, art. XI, § 2.** ***Deposition of resident alien:*** **see REAL PROPERTY LAW, § 12.** ***Drugging persons for enlistment:*** **see PENAL LAW, § 1482.**

Validity of enlistment of minor in state military service without consent of parents: **see notes, Ann. Cas. 1913C 1273, 16 Ann. Cas. 129, 39 L. R. A. (N. S.) 454.**

Consent of parent of minor.—It was formerly held, under the provision declaring that no minor should be enlisted without the consent of his parent or guardian, that such consent was made a condition of a valid enlistment. People v. New York County Jail, (1885) 100 N. Y. 20, 2 N. E. 870, reversing 34 Hun 393.

§ 96. Re-enlistments. Any man who has served the three years term of an original enlistment may be re-enlisted for a term of two years or more and a man who has served five years under an original enlistment or re-enlistment or both may be re-enlisted for a term of one or more years. No man over the age of sixty-four years shall be re-enlisted. A man applying for re-enlistment must pass the physical examination prescribed by regulations. If a man re-enlists within thirty days after his discharge his service shall be deemed continuous.

This section was derived from the Military Law of 1908, § 96. It was amended to read as above by L. 1911, ch. 100, § 2; L. 1913, ch. 567, § 1; L. 1914, ch. 160, § 2.

§ 97. Enlistment papers. Every person who enlists or re-enlists shall sign and make oath to an enlistment paper which shall contain an oath of allegiance to the state and the United States, and

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be in such form as may be prescribed in the regulations issued under this chapter. Such oath shall be taken and subscribed to before any officer above the rank of first lieutenant or lieutenant, junior grade, or before the commanding officer of a troop, battery, company or division and such officers are hereby authorized to administer such oath; but no enlistment shall be valid until it be approved, in regiments and battalions and squadrons not parts of regiments, by the commanding officer thereof; in the corps of engineers by the officer commanding the organized battalions thereof; in the coast artillery corps by the ranking officer commanding the coast defense command; in the quartermaster corps by the officer commanding the corps; in the hospital corps by the chief surgeon, division. A person making a false oath as to any statement contained in such enlistment papers shall upon conviction be deemed guilty of perjury.

This section was derived from the Military Law of 1908, § 97. It was amended to read as above by L. 1911, ch. 283; L. 1916, ch. 473, § 3.
Perjury generally: see PENAL LAW, § 1620 et seq.

§ 98. Transfers. Enlisted men may be transferred upon their own application as follows:

In the same regiment or battalion or squadron not part of a regiment from one company, troop, battery or division to another by the commanding officer of such regiment, battalion or squadron; from one company of the corps of engineers to another in the same corps by the colonel of the corps of engineers; from one company of the coast artillery corps to another in the same artillery district by the officer commanding the district; from one regiment, separate battalion, separate company or division to another in the same brigade by the commanding officer of the brigade, in the naval militia by its commanding officer from the naval militia to the national guard and vice versa by the governor; in all other cases by the major-general.

Non-commissioned and petty officers must be returned to the ranks before they can be transferred.

This section was derived from the Military Law of 1908, § 98.

§ 99. Non-commissioned staff and chief petty officers; non-commissioned and petty officers. Non-commissioned staff officers,

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chief petty officers, non-commissioned officers and petty officers shall be warranted:

a. In regiments and in battalions or squadrons not part of a regiment by the commanding officer of the regiment, battalion or squadron;

b. In the corps of engineers by the officer thereof commanding the organized battalions;

c. In the coast artillery corps by the ranking officer commanding the artillery district in which the man is to serve;

d. In the quartermaster corps by the chief of the quartermaster corps. In the hospital corps by the major-general on recommendation of the chief surgeon. In separate troops, batteries, and companies, by the commanding officer of the brigade or the major-general, as the case may be;

e. Petty officers or separate divisions by the commanding officer of the naval militia;

f. In all cases not hereinbefore provided for by the major-general.

All non-commissioned officers shall be warranted in the discretion of the officer issuing the warrant upon the written nomination of the officer under whose immediate command they shall respectively serve. The officer warranting a non-commissioned or petty officer shall have power to reduce him to the ranks for good and sufficient reasons; but a non-commissioned or petty officer enlisted as such shall be discharged. Non-commissioned or petty officers who shall be dropped vacate their positions.

This section was derived from the Military Law of 1908, § 99. It was amended to read as above by L. 1909, ch. 372; L. 1915, ch. 521.

Hearing before reduction to the ranks.—A non-commissioned officer may be reduced to the ranks by order of the warrant issuing officer without being afforded any opportunity to be heard. People v. Fackner, (1887) 44 Hun 360, 8 N. Y. St. Rep. 797.

§ 100. Dropping from the rolls. An enlisted man, who shall remove his residence to such distance from the armory of his organization or the armory post or district at which he is detailed to serve as to render it impracticable for him to perform his duties properly, or who, after due diligence, can not be found, may be dropped from the rolls by order of the officer authorized to approve his enlistment or in case of a post non-commissioned staff officer, by the major-general.

This section was derived from the Military Law of 1908, § 100.

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§ 101. Taking up from dropped. An enlisted man dropped by reason of removal may be taken up at any time within three years after such removal, in his former or any other organization, obtaining in the latter case first the written permission of the commanding officer of the company in which he served when dropped, approved by the officer, or any successor in office to the officer upon whose order he was dropped. An enlisted man dropped for removal may be taken up at any time after three years after such removal, upon his own application, approved by the officer upon whose order he was dropped. The taking up shall be done under the order of any officer who is authorized to order the dropping of men; and men then taken up shall receive credit for the time served before having been dropped. An enlisted man taken up from dropped shall not be taken up on any report, return or roll or permitted to do duty until he has passed the physical examination required upon enlistment. The order under which he is taken up shall fix a time and place for such examination and if he neglect or refuse to attend or to be examined at that time and place or at any time and place to which the examination may be postponed he shall be discharged without honor; if he fail to pass the required examination he shall be discharged for physical disability. An enlisted man dropped because he cannot be found cannot be taken up and the time he has served shall not be allowed or credited to him. An enlisted man shall not be taken up from dropped after he has reached the age of sixty-four years.

This section was derived from the Military Law of 1908, § 101. It was amended to read as above by L. 1909, ch. 369; L. 1912, ch. 161, § 1; L. 1913, ch. 567, § 2.

§ 102. Retirement. An enlisted man who has served faithfully twenty-five years in the national guard or naval militia, or both, either as private or non-commissioned officer, or both, may be withdrawn from active service by the governor at his own request and upon the recommendation of the officer under whose immediate command he is serving and either placed upon the retired list of enlisted men hereby created with the rank held by him at the date of his retirement or appointed or commissioned without examination a second lieutenant or ensign by brevet and placed upon the retired list of officers. An enlisted man who has

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reached the age of sixty-four years shall be withdrawn from active service by the governor and either placed upon the retired list of enlisted men created by this section with the rank held by him at the date of his retirement, or if his service entitles him thereto and his immediate commanding officer approves he may receive a brevet commission as in this section provided and be placed upon the retired list of officers.

This section was derived from the Military Law of 1908, § 102. It was amended to read as above by L. 1913, ch. 567, § 3.

§ 103. Discharges. An enlisted man discharged from service shall receive a discharge in writing.

A full and honorable discharge shall be issued to an enlisted man who has performed in each year of a full term of enlistment or re-enlistment and in each year and part of a year of his service thereafter, at least seventy per centum of all ordered duty and who has returned or been lawfully relieved from responsibility for all public property for which he is responsible. An enlisted man who fails to perform seventy per centum of all ordered duty during any year of his service may in the discretion of his commanding officer continue in service and become qualified for such discharge by making up such deficiency as follows: The number of drills or days of ordered duty which he failed or omitted to make in each year or in any less period than a year of his service but should have performed in that year or period to make up seventy per centum of all ordered duty therein shall be computed and the total of these deficiencies in all his service shall be ascertained, and he must perform eighty per centum of all ordered duty in each year or part of a year he continued in the service, including and counting as part of that percentage the drills or duties equal in number to the aforesaid total of deficiencies in all his service. In the computation of percentages fractions under one-half shall be disregarded and fractions above one-half shall be counted a unit. An enlisted man so continued in service shall be discharged except as in this section otherwise provided when he shall have made up his aforesaid deficiency or at the expiration of one year from the end of his term of enlistment or re-enlistment if he fails so to do or within fifteen days after he has given notice in writing of his application for a discharge to the officer authorized to issue the same.

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The word "year" as used in this section shall mean twelve calendar months beginning on the date on which the enlisted man took the oath of enlistment or re-enlistment.

An honorable discharge shall be issued to an enlisted man who has returned or has been lawfully relieved from responsibility for all public property for which he is responsible and whose service has been honest and faithful:

When he has served a full term of enlistment or re-enlistment and is not entitled to a full and honorable discharge; or

When he is discharged at his own request and is not entitled to a full and honorable discharge; or

When he is rendered surplus by the reduction or disbandment of an organization and is not entitled to a full and honorable discharge; or

When he is discharged for physical disability not caused by his own neglect or misconduct.

A dishonorable discharge shall be issued to an enlisted man:

In execution of a sentence of a general court-martial; or for failure to pay a fine imposed by a military or naval court within thirty days after its imposition; or

Upon expulsion from an association organized pursuant to this chapter in accordance with by-laws lawfully adopted.

A discharge without honor shall be issued to an enlisted man:

When his service has not been honest and faithful; or

When his discharge is for physical disability caused by his own neglect or misconduct; or

When he is discharged on his own request and is not entitled to a full and honorable or an honorable discharge; or

When he is convicted of a felony by a civil court of this or any other state or of the United States; or

When he is discharged for the good of the service; or

When this form of discharge is specially authorized by a provision of this chapter.

When a discharge without honor is to be issued to an enlisted man the officer under whose immediate command the enlisted man is serving shall apply in writing to the officer authorized to issue the discharge, briefly stating the grounds upon which the discharge is applied for. Except where the ground for the application is a conviction for felony a copy of the application and a notice of the time and place when it will be considered by the

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officer authorized to issue the discharge shall be served upon the enlisted man at least ten days before such time of hearing in the same manner as warnings for duty are given and the enlisted man shall be entitled to appear and shall be allowed an opportunity of making an explanation in person. In the case of a conviction of a felony a certified copy of the conviction shall be presented to the officer authorized to issue the discharge and shall be sufficient to authorize his action without notice to the enlisted man.

The discharges provided for in this section shall be issued by the officer authorized to approve an enlistment of the enlisted man discharged, except in the case of post non-commissioned staff officers, when they shall be issued by the major-general and except in cases where provision is otherwise made in this chapter.

An enlisted man shall be held for service until his discharge is issued and delivered.

If at the time an enlisted man becomes entitled to his discharge or is required to be discharged he has not returned or been lawfully relieved from responsibility for all public property for which he is responsible he shall be held for service and his term of enlistment shall continue and his discharge may be withheld for a period not exceeding twenty days to permit of a return of such property or of relief from responsibility therefor or the preferring of charges against the enlisted man or his return to a military court because of his failure to return or account for such public property or for any military offense relative to the same.

If at the time an enlisted man is required to be discharged or applies for his discharge or becomes entitled to his discharge by expiration of his term of enlistment or re-enlistment or by expiration of any extension thereof authorized by this section or in any other manner he is under charges or returned to a military court for trial for unpaid dues or fines of an association formed under this chapter or for a military offense, in either event no discharge shall be issued until the charges or return of dues, fines or offenses has been heard and determined by a military court nor if he be fined until thirty days after the fine was imposed unless the fine be sooner paid; and the enlisted man shall be held for service and his term of enlistment shall continue until such charges or returns are finally disposed of and until he is actually discharged. The discharge when issued shall be such as shall

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be appropriate to the enlisted man's service and record up to that time.

Except as otherwise provided in this section an enlisted man shall be discharged and dropped from the rolls at the expiration of his term of enlistment or re-enlistment, provided however that an enlisted man who has continued in service after the expiration of a term of enlistment or re-enlistment and is so serving when this amended section takes effect shall be subject to this requirement for discharge upon the expiration of the year of his service in which he is performing duty when said section takes effect and not before.

This section was derived from the Military Law of 1908, § 103. It was amended to read as above by L. 1912, ch. 161, § 2; L. 1914, ch. 160, § 3.

Discharge for nonpayment of dues.— Where the commanding officer determines not to issue a dishonorable discharge for nonpayment of dues, there is no authority to issue any other discharge, on the private's application for a discharge, than a full and honorable discharge. Op. Atty.-Gen. (1905) 320.

Compulsory discharge at end of enlistment.— Under the Military Code, an enlisted man entitled to a full and honorable discharge, could be discharged at the end of his term of enlistment without his consent. North v. Appleton, (1890) 25 Abb. N. Cas. 389, 12 N. Y. S. 72.

§ 104. War service. For all purposes under this act, officers and enlisted men of the active militia who entered the United States service in the Spanish-American war, shall, on re-entering the active militia, be entitled to credit for time served in the forces of the United States in that war as if this service had been rendered in the active militia.

This section was derived from the Military Law of 1908, § 104.

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ARTICLE 6

Service of the National Guard and Naval Militia

Section 110. Responsibility for efficiency for service.
111. Drills and parades.
112. Small arms practice.
113. Service without the state.
114. Application of this chapter to service without the state.
115. Use of troops in civil disorder.
116. In case of insurrection or invasion.
117. Warning for duty.
118. Excuses from duty.
119. Discipline and exercise.
120. Organization of depot battalions and units.
121. Organization when aiding civil authorities.

§ 110. Responsibility for efficiency for service. The major-general and the commanding officer of the naval militia may each cause those under his command to perform any military duty he may require and shall be responsible to the governor for the general efficiency of the national guard or naval militia and for the drill, instruction, inspection, small arms and artillery practice, movements, operations and care of troops.

Brigadier-generals shall be responsible to the major-general for the equipment, drill, instruction, movements and efficiency of their respective commands.

All other commanding officers shall be responsible to their immediate commanders for the equipment, drill, instruction, movements and efficiency of their respective commands.

Every commissioned officer and enlisted man shall be responsible to the officer under whose immediate command he serves for prompt and unhesitating obedience, proper drill and the preservation and proper use of the property of the United States, state or organization in his possession.

This section was derived from the Military Law of 1908, § 110.

§ 111. Drills and parades. Officers and enlisted men shall be obliged to perform during the year not less than twenty-four

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compulsory drills and parades, including inspection and muster. In addition to such drills and parades, a commanding officer may require the officers and enlisted men of his command to meet for parade, drill and instruction at such times and places as he may appoint.

When the drill or other duty of a command is by battalion or detachments, and the whole command drills in this manner in the course of a week, it shall be deemed one drill of the whole command. No parade or drill of the active militia shall be ordered on any day during which any election shall be held, except in cases of riot, invasion or insurrection or imminent danger thereof.

This section was derived from the Military Law of 1908, § 111.
Military parades by unauthorized bodies: see infra, § 241.
Military drills in schools: see EDUCATION LAW, §§ 695, 713.
Cited.— This section was cited in Op. Atty.-Gen. (1908) § 297.

§ 112. Small arms practice. To encourage marksmanship, the governor is authorized to offer annually a state decoration to those who shall excel in small arms practice; a prize not exceeding three hundred dollars in value, for competition among the organizations and corps of the national guard and naval militia, armed with rifle or carbine; a prize, not exceeding one hundred dollars in value, for competition among the organizations and corps (1) attached to the division (2) of each brigade and (3) of the naval militia, armed with rifle or carbine; and three prizes of the value one hundred dollars, seventy-five dollars and fifty dollars, respectively, to be awarded to the three companies (1) in organizations and corps attached to the division, (2) in each brigade and (3) in the naval militia, having the highest general figure of merit. The governor may also in his discretion provide suitable decorations and prizes for proficiency in practice with light and heavy guns. All such prizes to be competed for under regulations prescribed by the major-general or commanding officer of the naval militia approved by the governor.

Members of any staff corps, corps or department assigned to duty with any command shall be considered a part of such command for the purposes of the competitions herein authorized.

This section was derived from the Military Law of 1908, § 112.
Rights and liabilities of militia with respect to target practice: see Ann. Cas. 1914A 867, note.

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§ 113. Service without the state. The governor may order the active militia or any portion thereof to perform military duty of every description and to participate in small arms and gunnery competitions in this state or in any other state or territory or the District of Columbia or in any fort, camp or reservation of the United States therein and he may authorize the performance of military duty or participation in small arms or gunnery competitions by any part of the active militia anywhere without the state or without the United States. Cruise duty ordered for the naval militia may be required to be performed on United States vessels.

This section was derived from the Military Law of 1908, § 113, the section head then reading "Camp and field service and cruises." It was amended to read as above by L. 1910, ch. 241, § 1.

Maneuvers outside state.— The governor has authority to order the militia of the state outside its territorial limits for the purpose of taking part in military maneuvers for drill and instructions. Op. Atty.-Gen. (1910) 583, 588.

Compulsory federal service.— It would seem that not only is a member of the national guard "liable" to be called to duty outside of his own state, but that he may legally be compelled to go and perform the same on the call of the President, just as though he were a soldier of the regular army. Op. Atty.-Gen. (1894) 261.

Federal service.— The militia of the states while employed in the service of the United States do not cease to be militia of the state, because they are employed in the service of the United States. The state still retains the power while in the service of the United States to appoint the officers and fill all vacancies. They are still the militia of the state; but while employed in the service of the United States they are subject to the rules and discipline prescribed for the government of the regular army of the United States. People v. Campbell, (1869) 40 N. Y. 133. See also Op. Atty.-Gen. (1916), reported in 9 St. Dept. Rep. 406.

Cited.— This section was cited in Op. Atty.-Gen. (1908) 297.

§ 114. Application of this chapter to service without the state. Officers and enlisted men of the active militia shall be subject to and governed by the provisions of this chapter while without this state under the order or authorization of the governor under the preceding section in like manner and to the same extent as when on duty within this state under orders of the governor, as provided in section thirteen of this chapter. Military courts may be convened and held without the state with the same jurisdiction and power of punishment as if held within the state and offenses and delinquencies committed without the state may be tried and punished either without the state or within the state after the termination of the duty.

Amended to read as above by L. 1910, ch. 241, § 2. Section 114 of the Military Law of 1908 related to "Instruction in United States forts," and was consolidated in the Military Law as enacted in 1909.

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§ 115. Use of troops in civil disorders. Whenever it shall be made to appear to the governor that there is a breach of the peace, tumult, riot or resistance to process of this state, or imminent danger thereof, the governor may, upon the request of either the sheriff of a county or the mayor of a city, order out any part or all of the military or naval forces of the state in aid of the civil authorities, in the suppression of such disorder.

This section was derived from the Military Law of 1908, § 115, and which related to "Civil officers who may call on commanding officer for aid and conduct of national guard and naval militia officers." It was amended to read as above by L. 1916, ch. 355, § 1.

Power of sheriff or other officer in overcoming resistance to process: see Code Crim. Pro., § 102; JUDICIARY LAW, § 400.

Duty of person commanded to aid officer: see Code Crim. Pro., § 104.

Magistrates and officers to command rioters to disperse and to make arrests: see Code Crim. Pro., §§ 106, 107.

Refusal to aid magistrates or officers: see Code Crim. Pro., § 108.

Neglect or refusal of magistrate or officer to act: see Code Crim. Pro., § 109.

Proceedings if rioters do not disperse: see Code Crim. Pro., § 110.

When governor may proclaim county in state of insurrection: see Code Crim. Pro., § 115.

Power of Supreme Court justice.— Prior to the amendment of this section by the Laws of 1916 a justice of the Supreme Court was vested with power to issue the call for aid and the military authorities had no alternative save to obey. Welch v. Bard, (1913) 81 Misc. 262, 142 N. Y. S. 26, affirmed 157 App. Div. 943, 142 N. Y. S. 1140, affirmed (1913) 209 N. Y. 304, 103 N. E. 140.

Cited.— This section was merely cited in Op. Atty.-Gen. (1908) 297.

§ 116. In case of insurrection or invasion. In case of insurrection or invasion or imminent danger thereof, within the limits of any command, the senior commanding officer of such command shall order out for the defense of the state, the forces under his command, or any part thereof, and immediately report his action and the circumstances of the case to the governor and the major-general or commanding officer of the naval militia, as the case may be.

This section was derived from the Military Law of 1908, § 116.

Power of governor in case of invasion: see supra, § 8.

Cited.— This section was merely cited in Op. Atty.-Gen. (1908) 297.

§ 117. Warning for duty. Orders for duty may be oral or written. Officers and enlisted men may be warned for duty as follows:

Either by stating the substance of the order, or reading the order to the person warned, or by delivering a copy of such order to such person or by leaving a copy of such order at the last

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known place of abode or business of such person with some one of suitable age and discretion, or by sending a copy of such order or a notice containing the substance thereof to such person by mail, directed to him at his last known place of abode or business or to the post-office nearest thereto. Such warning may be given by any officer or non-commissioned officer. The officer or non-commissioned officer giving such warning shall make a return thereof containing the names of the persons warned, and the time, place and manner of warning. Such return shall be verified by his oath, which may be administered by any commanding officer; such verified return shall be as good evidence, on the trial of any person returned as a delinquent of the facts therein stated, as if such officer or non-commissioned officer had testified to the same before the delinquency court on such trial. Every commanding officer shall make the like return, on honor, and with like effect, of every delinquency and neglect of duty of his officers and non-commissioned officers, and also of every enlisted man who shall refuse or neglect to perform such military duty as may be required.

This section was derived from the Military Law of 1908, § 117.

Failure to respond to military duty: see PENAL LAW, § 1487.

Power to change the duties or field of service of militiamen: see L. R. A. 1915E 235, note.

Warning for stated drills.— Warning need not be given, as required by this section, for drills regularly held at stated times under the rules of the company. People v. Crane, (1891) 125 N. Y. 535, 26 N. E. 736.

Warning delinquents.— It would seem that it is not necessary to warn a delinquent to attend the regular drills and parades, before he may be fined for absence from such drills and parades. Matter of Cross, (1882) 11 Abb. N. Cas. 230.

Cited.— This section was cited in Welch v. Bard, (1913) 81 Misc. 262, 142 N. Y. S. 26, affirmed 157 App. Div. 943, 142 N. Y. S. 1140, affirmed 209 N. Y. 304, 103 N. E. 140; Op. Atty.-Gen. (1894) 258.

§ 118. Excuses from duty. The officer ordering any military duty shall have the power to excuse any officer or enlisted man for absence therefrom upon good and sufficient grounds. The governor or major-general or the commanding officer of the naval militia, with the approval of the governor, may relieve any organization of the militia on active duty from the further performance of such duty, and may order any other organization to perform such duty.

This section was derived from the Military Law of 1908, § 118.

Failure to respond to military duty: see PENAL LAW, § 1487.

Cited.— This section was merely cited in Op. Atty.-Gen. (1894) 258.

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§ 119. Discipline and exercise. The system of discipline and exercise of the national guard and of the naval militia of this state shall conform generally to that of the army and navy of the United States, respectively, as it is now, or may hereafter be prescribed by the president, and to the provisions of the laws of the United States, except as otherwise provided in this chapter.

This section was derived from the Military Law of 1908, § 119.

§ 120. Organization of depot battalions and units.[1] When a regiment, the companies serving in a coast defense command,[2] the organized battalions of the corps of engineers or a squadron or battalion not part of a regiment shall be in the actual service of the United States, the governor shall organize depot units as follows,[3] a battalion to take the place of a regiment and such number of companies, troops or batteries as he may determine to take the place of other units.

Such depot units[4] shall not be called on for duty outside the state except in case of emergency to be determined by the governor,[5] but the members thereof may be transferred by him[6] to fill temporary or permanent[7] vacancies or to make up a deficiency in strength[8] in the [9]organization for which the depot unit is formed.

[10]The governor from time to time and in advance of the entry of an organization into the actual service of the United States may appoint and commission the officers necessary for the depot unit or units authorized by this section to be formed in place of such organization by selection from the reserve list of officers in the first instance and so long as there are officers thereon available for the positions to be filled, or he may detail officers from the reserve list for such positions; and he may authorize the formation of the enlisted strength of such unit or units by selection and transfer from the reserve list of non-commissioned officers and enlisted men in the first instance and so long as there are

1 Words "and units" new.

2 Words "defense command" substituted for words "artillery district."

3 Words "depot units as follows" new.

4 Words "depot units" substituted for words "new organization."

5 Words "except in case of emergency to be determined by the governor," new.

6 Words "by him" new.

7 Words "temporary or permanent" new.

8 Words "or to make up a deficiency in strength" new.

9 Remainder of sentence substituted for words "unit represented by the new organizations."

10 Remainder of section new.

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non-commissioned officers and men thereon available for the positions to be filled and in default thereof tender of or agreement for service therein in such form as he may prescribe; provided, such appointment shall be made upon the nomination of the commanding officer of the organization for which the depot unit is formed unless such organization be in the actual service of the United States, in which case the selection shall be made by election or appointment in the depot unit by the method adopted by the organization for which it is formed; and provided that the commissions authorized by this section and the appointment of non-commissioned officers of depot units shall confer upon the persons receiving such commissions or appointments, the rights and privileges of commissioned officers or non-commissioned officers, respectively, of the national guard of this state during the period that the organization for which the depot unit with which they are serving is in the actual service of the United States and only during said period except that officers and non-commissioned officers of depot units shall have authority to exercise command in their respective units.

The governor in advance of an organization entering into the actual service of the United States may authorize the issue for its depot unit or units of such arms, equipments, colors, camp and garrison equipage, books of instruction and of record and other supplies as may be necessary for the proper performance of the duty required by this chapter and such issue may be made to an officer or officers commissioned in such depot unit under this section or to an officer or officers of the organization for which such depot unit is formed. Each officer and member of a depot unit to whom public property is issued shall be personally responsible to the state for such property to the same extent that officers and enlisted men of the national guard are responsible for public property issued to them.

This section was derived from the Military Law of 1908, § 120. As consolidated in the Military Law as enacted in 1909 the section head was "Organization of depot battalion." It was amended to read as above by L. 1915, ch. 287. The amendments are shown in the footnotes.

§ 121. Organization when aiding civil authorities. When two or more companies are called or ordered on duty in aid of the civil authorities by the call or order of a civil officer or officers or otherwise under such circumstances that in the opinion of the major-general they should operate under one commander, a field officer

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with a suitable staff of commissioned and noncommissioned officers and appropriate detachments of sanitary troops shall be detailed by the commanding officer of the command of which the companies are a part or if they are parts of different commands by the commanding officer of the brigade to which they belong otherwise by the major-general, and whenever one company or less than a company is so called or ordered on duty a suitable detachment of sanitary troops shall be so detailed. Such detailed officers and men shall for all purposes be deemed on duty in aid of the civil authorities as if specifically called or ordered thereon by the civil officer or officers or other authority, civil or military, calling or ordering on duty the companies with which they are detailed. If such companies render service in more than one county the expenses and compensation of such detailed officers and men shall be apportioned among the counties in which service is rendered by the officer who approves the vouchers and payrolls of the companies with which they are detailed. The provisions of this section shall apply to the naval militia, divisions being considered companies, and the commanding officer and other officers thereof shall possess and exercise the authority given to the major-general and officers of the national guard of assimilated rank, except that when serving with troops of the national guard, the detail of an officer to command the entire force with an appropriate staff shall be made by the major-general.

New. Added by L. 1911, ch. 284.

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ARTICLE 7

Military Courts

Section 130. Military courts.
131. Courts of inquiry.
132. General and garrison courts-martial.
133. Service of charges.
134. Offenses of officers triable by general courts-martial; punishments.
135. Offenses of enlisted men triable by general court-martial; penalties.
136. Delinquency courts for officers.
137. Delinquency courts for enlisted men.
138. Fines for offenses against by-laws; company dues.
139. Oaths and procedure of delinquency courts.
140. Summons to delinquents; service thereof.
141. Appeals from delinquency courts.
142. Payment of fines and disposition thereof.
143. Discharge for failure to pay fine.
144. President of court; vacancies; members to be in uniform; sitting of court.
145. Collection of fines and penalties.
146. Marshals; appointment, bonds and duties.
147. Subpœnas, attachments, commissions.
148. Challenges; oaths of members.
149. Form of mandate; execution by public officers.
150. Commitments for disorderly conduct.
151. Attendance of judge-advocate; accused may have counsel.
152. Secrecy.
153. Approval, confirmation or disapproval of sentence.
154. Revision of proceedings; remission of punishment.
155. Indemnity for action of military courts.
156. Presumption of jurisdiction.
157. Naval militia.
158. Summary courts.

§ 130. The military courts. The military courts of this state shall be:

1. Courts of inquiry.
2. General courts-martial.

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3. Garrison courts-martial.

4. Delinquency courts, which are of two kinds (1) for officers, (2) for enlisted men.

5. Summary courts.

This section was derived from the Military Law of 1908, § 130. It was amended to read as above by L. 1910, ch. 108, § 1. The amendment added subd. 5.

Effect of Penal Law on military courts: see PENAL LAW, § 39.

Punishment for offenses outside state.—The military tribunals of the state have power to inflict punishment for offenses committed by members of the organized militia outside the state when under orders of the governor. Op. Atty.-Gen. (1910) 583, 588, 589.

§ 131. Courts of inquiry. Courts of inquiry, to consist of from one to three officers of at least equal grade with the officer, or with the senior officer if there be more than one, in regard to whom the court is ordered, may be ordered by the governor or under his directions by the major-general to examine into the nature of any transaction of or accusation or imputation against any officer or soldier. The court shall, without delay, report to the officer ordering it the evidence adduced, a statement of the facts, and, when required, an opinion thereon. Any officer may request a court of inquiry.

This section was derived from the Military Law of 1908, § 131.

General scope of order.—A court of inquiry may be ordered to examine into the nature of any transaction, of an accusation or imputation against any officer or soldier, make findings of fact and, whenever required, express an opinion thereon. People v. Hoffman, (1901) 166 N. Y. 462, 60 N. E. 187, 54 L. R. A. 597.

§ 132. General and garrison courts-martial. General courts-martial may be ordered by the governor or under his direction by the major general. Such courts[1] shall consist of five officers, any three of whom shall constitute a quorum, but at all time a majority of the court must be of a grade at least equal to that of the accused. Garrison courts-martial for the trial of military offenses committed by enlisted men, when subject to the articles of war, may be appointed by the officer thereto authorized by such articles, and shall possess the jurisdiction and power to sentence and punish exercisable by such courts thereunder prior to the passage of the statutes of the United States creating summary courts. Such courts shall consist of three officers, and the oaths

[1] Words "Such courts" substituted for word "and."

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of members, the organization of the court, its procedure, and the record of its proceedings shall be in the form prescribed for that of general courts-martial convened under this article.

This section was derived from the Military Law of 1908, § 132. It was amended to read as above by L. 1915, ch. 90, § 1. The amendment is shown in the footnote.

Number of members.—A court consisting of one officer cannot acquire jurisdiction to try one accused of a charge which the law requires shall be tried before a court of three officers by reason of failure to plead lack of jurisdiction. Matter of Leary, (1882) 27 Hun 564.

Review on certiorari.— Where the court has jurisdiction of the subject matter and of the person of the accused, if there is any evidence in support of the charges and specifications, its conclusion cannot be reviewed by a writ of certiorari. People v. Rand, (1886) 41 Hun 529, 5 N. Y. St. Rep. 31. But in People v. Townsend, (1880) 10 Abb. N. Cas. 169, affirmed 25 Hun 313, it was held that the judgment of a court martial would be reversed on certiorari where there was a total lack of evidence to support the charge.

Liability for costs on reversal.— The president of a court martial is personally liable for costs imposed by an order reversing, on certiorari, a judgment of a court martial for lack of jurisdiction. Matter of Leary, (1883) 30 Hun 394.

§ 133. Service of charges. When an officer or enlisted man is put in arrest for the purposes of trial, a copy of the charges and specifications upon which he is to be tried shall be delivered to him or left at his last known place of abode or business, within twenty days after his arrest, and a court shall be ordered for his trial within thirty days after the notice of arrest is received by the officer authorized to order the court. If a copy of the charges and specifications be not served, or a court be not ordered within the time herein limited, the arrest shall cease, but such charges and specifications may be served, a court ordered and the officer or enlisted man be brought to trial within twelve months after such release from arrest. The appearance of the accused, without objection, and pleading to the charges, shall be deemed a waiver of any defect or irregularity of such service of any of the papers mentioned in this section.

This section was derived from the Military Law of 1908, § 133.

Sufficiency of charges.— In the trial of a commissioned officer by a general court martial, the same degree of particularity is not required in making the charges as the law has enacted in framing indictments. What the proceedings require is that the person charged should have intelligent information of the charge presented against him. Beyond that, it is not necessary to go. It is sufficient for the purposes of the proceeding that the charges are intelligently expressed, with reasonable clearness, stating the time and place when the misconduct was alleged to have occurred. People v. Porter, (1888) 50 Hun 161, 3 N. Y. S. 35.

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Service in delinquency cases.— Section 114 of the Military Code required charges to be delivered in advance to a person brought to trial before a court martial, but this was held not to apply to delinquency courts. People v. Crane, (1891) 125 N. Y. 535, 26 N. E. 736; People v. Reed, (1892) 64 Hun 453, 19 N. Y. S. 877, affirmed (1894) 142 N. Y. 630, 37 N. E. 565. Section 139 of the present law specifically provides when charges shall be served in the case of delinquency courts.

Cited.— This section was cited in Matter of Leary, (1882) 27 Hun 564; Op. Atty.-Gen. (1898) 163.

§ 134. Offenses of officers triable by general courts-martial; punishments.[1] Commissioned officers may be tried by general court-martial for the following offenses:

1. Unmilitary or unofficer-like conduct.
2. Drunkenness on duty.
3. Neglect of duty.
4. Disobedience of orders or any act contrary to the provisions of this chapter, or to the provisions of the regulations for the government of the national guard.
5. Refusing to grant a discharge to an enlisted man when entitled to the same.
6. Oppression or injury of any under his command.
7. Conspiracy or attempt to break, resist or evade the laws or lawful orders given to a person, or advising any person so to do.
8. Insult or disrespect to a superior officer in the line of military duty.
9. Presuming to exercise his command while under arrest or suspension.
10. Neglect or refusal, when commanding officer, to order out the troops under his command, when required by law or lawfully ordered by his superior officer.
11. Neglect or refusal to make a draft or detachment when lawfully ordered to do so.
12. Parading the troops under his command on days of election contrary to law.
13. Receiving any fee or gratuity for any certificate.
14. Neglect, when detailed to drill or instruct a command, to make complaint for neglect or violation of duty as provided by law, or for any other neglect for which a commanding officer would be liable.

[1] Word "punishments" substituted for word "penalties."

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15. Neglect or refusal to march, to make a draft, or for disobedience to an order, in case of rebellion or insurrection, as provided by law.

16. Refusal or neglect to obey a precept or order to call out the national guard, or militia, or an order issued in obedience thereto, or for advising any officer or soldier to do the like.

17. Making a false certificate, account, or muster or parade return.

18. Conduct unbecoming an officer and a gentleman, or for conduct to the prejudice of good order and military discipline.

On conviction of any of the above offenses an officer may be sentenced to be dismissed from the service, and he shall thereby become incapacitated from holding any military commission, [1]to be suspended from rank, command or duty for a period not exceeding sixty days, to loss of files in rank, to be fined to an amount not exceeding one hundred dollars or to be reprimanded or to any one or more of such punishments.

This section was derived from the Military Law of 1908, § 134. It was amended to read as above by L. 1913, ch. 566. The amendments are shown in the footnotes.

Nature of offenses generally.— General courts martial have power to try commissioned officers for eighteen classes of offenses relating to their conduct in the military service, such as disobedience of orders, neglect of duty, and the like, and by their judgment an officer may be dismissed from the service or fined or reprimanded. People v. Hoffman, (1901) 166 N. Y. 462, 60 N. E. 187, 54 L. R. A. 597.

Offenses disconnected with service.— When an officer is not actually engaged in the duties of the national guard or in acts which have connection with military duties, and when not in uniform, he is not amenable to a court martial. People v. Townsend, (1880) 10 Abb. N. Cas. 169.

Unmilitary conduct.— Becoming publicly intoxicated while wearing military uniform is a familiar instance of an offense against gentlemanly and officer-like conduct required in time of peace. Buying or obtaining corruptly a record as a marksman while so attired, and when attended by many comrades in public place, must be deemed equally a military offense, as it brings scandal and disgrace upon the national guard. People v. Rand, (1886) 41 Hun 529, 5 N. Y. St. Rep. 31.

Newspaper article as offense.—An officer of the national guard who causes to be published in a newspaper, in a sensational manner, charges and specifications, before lodging them with the proper officers, is guilty of conduct prejudicial to discipline and amenable to punishment. People v. Townsend, (1880) 10 Abb. N. Cas. 169, affirmed 25 Hun 313.

Disobedience of orders.— The charge of disobedience of orders requires a three-officer court. Matter of Leary, (1882) 27 Hun 564.

Circulation of charges against other officers.— Circulation and publication

[1] Remainder of section formerly read: "fined to an amount not exceeding one hundred dollars or reprimanded or to all or either of such fines and penalties."

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of charges against another officer before they have been approved or served, constitutes conduct unbecoming an officer and gentleman; but not so as to charges and criticisms made in a private capacity as a citizen or as editor of a newspaper. People v. Townsend, (1880) 10 Abb. N. Cas. 169, affirmed 25 Hun 313.

Cited.— This section was cited in Welch v. Bard, (1913) 81 Misc. 262, 142 N. Y. S. 26, affirmed 157 App. Div. 943, 142 N. Y. S. 1140, affirmed (1913) 209 N. Y. 304, 103 N. E. 140; People v. Porter, (1888) 50 Hun 161, 3 N. Y. S. 35.

§ 135. Offenses of enlisted men triable by general court-martial; penalties. Enlisted men may be tried by a general court-martial for the following offenses:

1. Disobedience of orders.
2. Disrespect to superiors.
3. Mutiny.
4. Desertion.
5. Drunkenness on duty.
6. Conduct prejudicial to good order and military discipline.
7. Any act contrary to the military law, or to the provisions of the regulations for the government of the national guard.
8. Violation of the by-laws, rules or regulations of an association organized pursuant to this chapter.[1]

On conviction an enlisted man may be sentenced to be dishonorably discharged with loss of time served, reprimanded, and if a noncommissioned officer, reduced to the ranks, or fined to an amount not exceeding fifty dollars or all or either of such fines and penalties.

This section was derived from the Military Law of 1908, § 135. It was amended to read as above by L. 1910, ch. 108, § 2. The amendment is shown in the footnote.

Cited.— This section was cited in Welch v. Bard, (1913) 81 Misc. 262, 142 N. Y. S. 26, affirmed 157 App. Div. 943, 142 N. Y. S. 1140, affirmed (1913) 209 N. Y. 304, 103 N. E. 140.

§ 136. Delinquency courts for officers. Delinquency courts for the trial of officers shall have jurisdiction over commissioned officers below the rank of brigadier-general and over the following offenses for:

1. Absence[2] without excuse at any drill, parade, encampment, meeting for instruction or other duty ordered by competent authority.

1 Words "except for nonpayment of fines and dues," omitted.
2 Formerly "non-attendance."

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2.[1] Neglecting to take proper care of any arms, equipment or military property, or willfully injuring or destroying any arms, equipment or military property whatever.

The court may inflict fines as follows:

1.[2] For absence without excuse at any drill, parade, encampment, meeting for instruction or other duty ordered by competent authority, a fine of not less than five dollars nor more than ten dollars for each absence for a day or any part thereof.

2.[2] For neglecting to take proper care of arms, equipments or military property or willfully injuring, destroying any arms or military property whatever, a fine not exceeding ten dollars and in addition the sum equal to the value of any property lost, injured or destroyed assessed by the court.

The governor shall order, or cause to be ordered, such courts, which shall consist of three officers of at least equal grade with the accused.

This section was derived from the Military Law of 1908, § 136. It was amended to read as above by L. 1910, ch. 242. The amendments are shown in the footnotes.

§ 137. Delinquency courts for enlisted men. A delinquency court for the trial of enlisted men shall consist of one commissioned officer, and shall have jurisdiction over the following offenses:

1. Absence without proper excuse from or tardiness without like excuse in attending any drill, parade, encampment, meeting for instruction or other duty ordered by competent authority, or for failure to make any report, account or return ordered by like authority.

2. Disobedience of orders.

3. Neglecting to take proper care of any arms, equipments or military property, or selling, lending or giving away, or wilfully injuring or destroying any arms, equipments or military property whatever.

4. Disrespect to superiors.

5. Drunkenness on duty.

6. Conduct prejudicial to good order and military discipline.

[1] Following subdivision new.

[2] Following subdivision new. Fines formerly of not more than ten nor less than five dollars might be inflicted for each day's absence.

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7. Any act contrary to the military law or to the provisions of the regulations for the government of the national guard.

8. Violations of the by-laws, rules and regulations of an association organized pursuant to this chapter.

9.[1] Failure to appear in person before the court when summoned so to do in the manner provided in this chapter.

The court may inflict fines as follows: (1) For absence without proper excuse from or tardiness without like excuse in attending any drill, parade, encampment, meeting for instruction or other duty ordered by competent authority, a fine not less than one nor more than five dollars for each day or part thereof of such absence; and for each failure to make any report, account or return ordered by like authority a fine of not less than one nor more than five dollars for each such failure. (2)[2] For failure to appear in person before the court when summoned so to do in the manner provided in this chapter a fine of not less than one nor more than five dollars. (3)[3] For any other offense, a fine not exceeding twenty-five[4] dollars, and in addition a sum equal to the value of any property lost or destroyed assessed by the court. The commanding officer of a regiment, or a battalion or squadron not part of a regiment, the officer commanding the organized battalions[5] of the corps of engineers and the [6]officer of the coast artillery corps commanding a coast defense command[7] may each appoint a delinquency court or delinquency courts for the trial of the enlisted men of his command and of any detachment or department attached thereto or detailed for duty therewith, and shall designate the organization, detachments and men subject to the jurisdiction of each court. The commanding officer of each brigade may in like manner appoint a delinquency court or delinquency courts for the trial of enlisted men of any organization, detachment or department under his direct command and shall designate the organizations, detachments and men subject to the jurisdiction of each court. The major-general may in like manner appoint a delinquency court or

[1] Subd. 9 new.
[2] Penalty (2) new.
[3] Formerly penalty (2).
[4] Formerly "ten."
[5] Words "officer commanding the organized battalions" substituted in place of "colonel."
[6] Word "ranking" omitted.
[7] Words "a coast defense command" substituted for "an artillery district."

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delinquency courts for the trial of enlisted men of any organization, detachment, department or corps not herein provided for and shall designate the organizations, detachments, department or corps and men subject to the jurisdiction of each court. The jurisdiction of a delinquency court to try the offenses specified in this section shall be concurrent with that of general courts-martial and garrison courts-martial, but where the officer who is authorized to appoint the court considers that any offense is of sufficient gravity or that the fine which a delinquency court has power to impose is not a sufficient punishment, such officer may recommend that the trial be had before a general court-martial or a garrison court-martial as the case may be. A delinquency court so appointed shall be permanent and continuous. The officer authorized to appoint such court may at pleasure detail and relieve therefrom an officer to hold the same. Proceedings pending before the court shall not abate or be suspended by reason of such relief or new detail, and an officer so detailed shall have full power and authority to do and perform all acts necessary to complete any proceedings pending before the court to which he was appointed, and to carry into effect any judgment, mandate, order or process, made or issued by such court previous to his detail. The court may be held at such times and in such places as the officer holding it may direct. The officer constituting the court may appoint, and at any time remove a clerk thereof, who shall receive a reasonable compensation, to be fixed by such officer with the approval of the officer appointing the court.

This section was derived from the Military Law of 1908, § 137. It was amended to read as above by L. 1910, ch. 108, § 3, and L. 1916, ch. 467. The amendment by L. 1910, ch. 108, § 3, added the words "or for failure . . . by like authority" at the end of subdivision 1; eliminated the word "standing" which was originally between the words "of" and "orders" in subdivision 2; added the words "selling, lending or giving away, or" which follows the words "Military property" in subdivision 3; added subdivisions 4, 5, 6, 7 and 8; added the words "and for each failure . . . such failure" at the end of (1); added the fifth sentence in (2). The amendments by L. 1916, ch. 467, are given in the footnotes.

Service of charges and specifications: **see supra, § 133.**

Jurisdiction of single officer court.—A court martial consisting of one officer has jurisdiction only of delinquencies and deficiencies that occur in the military force. Matter of Leary, (1882) 27 Hun 564.

Enlistment as element of jurisdiction.— It is a fundamental requisite to the jurisdiction of such courts as those prescribed by this section that the persons over whom they attempt to exercise authority shall have been duly enlisted and be legally subject to the obligations of military discipline. People v. New York County Jail, (1885) 100 N. Y. 20, 2 N. E. 870, reversing 34 Hun 393.

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§ 138. Fines for offenses against by-laws; company dues. Fines for offenses against the by-laws, rules and regulations of any association organized pursuant to this chapter and dues to such an association not exceeding in amount twenty-five dollars may be returned to a delinquency court by any officer of such association together with a copy of such by-laws, rules and regulations. The court may sentence the persons so returned to pay such fines and dues and enforce such sentence in the same manner as a fine for a military offense. Such fines or dues when collected shall be paid to the treasurer or financial secretary of the association of which the person owing the same was a member.

This section was derived from the Military Law of 1908, § 138.

Fines by delinquency court.— The provisions for the enforcement of fines imposed for violation of a by-law have no application to the enforcement of fines imposed by a delinquency court itself. People v. Crane, (1891) 125 N. Y. 535, 26 N. E. 736.

§ 139. Oaths and procedure of delinquency courts. Before entering upon his duties each member of a delinquency court shall take an oath of office to the effect that he will well and truly try and determine, according to evidence, all matters between the people of the state of New York and any person or persons who shall come before the court to which he is appointed. This oath need not be taken in the presence of delinquents and may be taken before any officer authorized by law to take acknowledgments of deeds, or before a field officer or the commanding officer of a brigade, all of whom shall administer the oath without fee. When the court is composed of three officers the junior member may administer the oath to the senior member, who in turn may administer it to the other members. The court shall keep records showing the cases tried and the findings and sentences therein but the evidence taken need not be recorded. No challenges shall be allowed in such courts. No formal charges or specifications shall be required in such court, except that when the offense charged is the failure to make any report, account or return or is one specified in the second, third, fourth, fifth, sixth, seventh,[1] eighth, or [2]ninth subdivisions of section one hundred and thirty-seven of this chapter the summons shall specify the offense for which the accused is to be tried and briefly state the facts constituting the

[1] Word "or" omitted.
[2] Words "or ninth" new.

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same. The return of delinquents and of fines and dues under association by-laws shall take the place of charges and specifications and shall be prima facie evidence of the facts therein stated.

This section was derived from the Military Law of 1908, § 139. It was amended to read as above by L. 1910, ch. 108, § 4, and by L. 1916, ch. 468, § 1. The amendment by L. 1910, ch. 108, § 4, added to the sixth sentence the words following the words "shall be required"; added the words "of charges and specifications" in the last sentence. The amendments made by L. 1916, ch. 468, § 1, are shown in the footnotes.

Acquisition of jurisdiction.— By the service of the summons and the appearance of the accused in the delinquency court pursuant to its mandate, the court acquires jurisdiction of his person. People v. Reed, (1892) 64 Hun 453, 19 N. Y. S. 877, affirmed (1894) 142 N. Y. 630, 37 N. E. 565.

Service of charges.— Section 114 of the Military Code required formal charges to be delivered in advance in the case of trial in courts martial, but this was held not to apply to delinquency courts. People v. Crane, (1891) 125 N. Y. 535, 26 N. E. 736.

Warning for drills.— To sustain the jurisdiction of the court martial it is not necessary to show that the delinquent was properly warned to attend the drills and parades for absence from which he is fined. Matter of Cross, (1882) 11 Abb. N. Cas. 230.

Preservation of evidence.— The evidence taken before a delinquency court need not be recorded, and where the proceedings show that the evidence was considered and the accused fined, it must be presumed that there was sufficient evidence to warrant such action. People v. Crane, (1891) 125 N. Y. 535, 26 N. E. 736.

§ 140. Summons to delinquents; service thereof. The president of a delinquency court shall designate and direct a fit person or persons to summon all delinquents to appear before the court. Service of the summons shall be made by delivering to and leaving with each delinquent a copy thereof, or by leaving a copy at his last known place of abode or business, or in towns or cities in which there is a postal delivery by mailing to him a copy directed to his last known place of abode or business.

This section was derived from the Military Law of 1908, § 140.

Notice of convening of court.— Under the former provisions of the Military Code it was held that the alleged delinquent was not entitled to five days' notice that the court martial would be convened for the trial of his case. It would seem that the court acquired jurisdiction when the summons against him was personally served upon him and he was thus notified to appear and confront his accusers. Matter of Cross, (1882) 11 Abb. N. Cas. 230.

Time of notice.— Where "due notice" of an accusation is required by the regulations, service of notice three days before the hearing, by mail, is sufficient. People v. Crane, (1891) 125 N. Y. 535, 26 N. E. 736.

Prepayment of postage.— While prepayment of postage is necessary to effect a valid service by mail, such prepayment will be presumed where the return states that the summons was duly served by mailing, and the sergeant's report is to the effect that he duly summoned the delinquents. People v. Crane, (1891) 125 N. Y. 535, 26 N. E. 736.

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§ 141. Appeals from delinquency courts. A person sentenced by a delinquency court shall be notified of the sentence either by the statement of the same to him by the president of the court or by service on him of a written or printed notice of such sentence. A person sentenced by a delinquency court may appeal to the officer who ordered the court or his successor in command by serving a written notice of appeal on the president of the court within five days after notification of the sentence. The notices authorized by this section shall be served in the manner prescribed in this article for service of a summons on delinquents except that a notice of appeal if mailed shall be addressed to the armory or military station of the president. The record in the case appealed shall be forthwith transmitted by the court to the reviewing officer who shall hear and determine the appeal within ten days after receiving such record. The reviewing officer may remit or mitigate the fine or penalty reviewed and in hearing the appeal he shall possess the same power to take evidence, administer oaths and compel witnesses to attend and testify and to punish their failure so to do as the court whose sentence is appealed from possesses. No sentence of a delinquency court shall be enforced until the proceedings and sentence of the court have been approved by the officer authorized to review the same.

This section was derived from the Military Law of 1908, § 141.
Cited.— This section was cited in Matter of Cross, (1882) 11 Abb. N. Cas. 230.

§ 142. Payment of fines and disposition thereof. Fines may be paid to the president of a court or to a marshal thereof, and in a delinquency court the president shall record the fact in the records of the court. The amount of any such fine may be noted upon any roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due him, until said fine is liquidated. Any sum so deducted from any state pay or allowance shall be turned into the delinquency court which imposed the fine and shall be paid over by the officer receiving the same in like manner as provided for other fines and moneys collected under a sentence of a delinquency court. [1]Any sum so deducted from any United States pay or allowance shall be disposed of as authorized by the laws of the United States and the

[1] Following sentence added by amendment of 1910.

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regulations issued thereunder. A fine or penalty imposed by a military court upon an enlisted man shall be paid by the officer collecting the same into the treasury of the county within which the organization, detachment or corps of which the person paying the same is a member or to which he is detailed or attached is located within thirty days after the collection thereof and shall form a part of and be credited to the military fund of such organization, corps or detachment, [1] except that in the case of a headquarters company, a machine gun company and a supply company the fines and penalties imposed upon enlisted men serving therein shall be paid into the treasury of the county within which the headquarters of the regiment of which such company is a part is located and shall form part of and be credited to the military fund of such regiment. A fine or penalty imposed on an enlisted man of the coast artillery corps or a man attached or detailed thereto or serving therewith shall be paid in like manner into the treasury of the county in which the artillery district in which the person paying the fine serves is located and shall be credited to the military fund of such artillery district. The treasurer of such county shall thereupon report the amount thereof, designating the organization to which it belongs, to the adjutant-general of the state. The amount of fines or penalties so collected from any commissioned officer shall be paid by the officer collecting the same, to the adjutant-general of the state, who shall apply the same to the use of the national guard.

This section was derived from the Military Law of 1908, § 142. It was amended to read as above by L. 1910, ch. 108, § 5, and L. 1915, ch. 449. The amendments are shown in the footnotes.

Disposition of fines collected.— Fines and penalties collected must be paid to the state treasurer pursuant to the provisions of section 37 of the State Finance Law. Op. Atty.-Gen. (1916), reported in 6 St. Dept. Rep. 473. For the grounds on which the attorney-general distinguished. Op. Atty. Gen. (1910) 599, see infra, § 243, note.

§ 143. Discharge for failure to pay fine. An enlisted man fined by a military court who shall neglect or refuse to pay such fine within thirty days after the same was imposed, may, after hearing and proceedings had as required by section one hundred and three of this chapter for the issue of a discharge without honor, be dishonorably discharged from the service by the officer ordering the court without allowance of the time served.

This section was derived from the Military Law of 1908, § 143. It was

[1] Remainder of sentence added by amendment of 1915.

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amended to read as above by L. 1913, ch. 419, and L. 1916, ch. 468, § 1. The amendment by L. 1913, ch. 419, omitted the words "and shall thereby be disqualified from serving in the national guard for a period of five years" from the end of the section. The amendment by L. 1916, ch. 468, § 1, added the words "after hearing and proceedings had . . . without honor."

Discharge for nonpayment of dues: see supra, § 103, note.

§ 144. President of court; vacancies; members to be in uniform; sitting of court. The president of every military court shall be the member of the court highest in grade and rank. Whenever a military court consists of one person, he shall be deemed the president thereof within the meaning of this chapter. In the absence of the president of a military court, the senior officer present shall preside, with all the powers of president. All the members of such court shall, when on duty, be in uniform. The court may sit without regard to hours, and may adjourn, from time to time, as may be necessary for the transaction of business. Any vacancy in a military court may be filled by the officer who ordered the court, or his successor in command.

This section was derived from the Military Law of 1908, § 144.

§ 145. Collection of fines and penalties. For the purpose of collecting any unpaid fines or penalties imposed by any military court and approved by the reviewing officer thereof, the president of the court shall issue a warrant or warrants within twenty days after the expiration of the time to appeal from such fine or penalty unless an appeal has been taken, in which event he shall issue the same within twenty days after the appeal has been disposed of and notified by the reviewing officer to him. Such warrants shall be returnable in ninety days from their receipt by the officer executing them, and they may be renewed from time to time thereafter for like periods by the president of the court. No property shall be exempt from the payment of such fines and penalties. In default of sufficient personal property to satisfy the same, the officer executing the same shall take the body of the delinquent and convey him to the common jail of the city or county in which he may be found, whose jailor shall closely confine him without bail for two days for any fine or penalty not exceeding two dollars, and two additional days for every dollar above that sum, unless the fine or penalty together with the costs and jailor's fees be sooner paid. No such imprisonment shall extend beyond the

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period of ten days, and the prisoner may be liberated at any time by the order of the officer who ordered the court that imposed the fines or penalties.

This section was derived from the Military Law of 1908, § 145.

One warrant for several fines.— It would seem that a delinquency court does not exceed its authority in embracing in one warrant several fines, so long as the fine imposed for each delinquency does not exceed the maximum sum imposed as a penalty for any one delinquency. People v. Reed, (1892) 64 Hun 453, 19 N. Y. S. 877, affirmed (1894) 142 N. Y. 630, 37 N. E. 565.

Imprisonment for debt.— The legislature has the power to direct the enforcement of valid judgments by imprisonment in case property cannot be found. The provisions therefore of the Military Law authorizing the arrest of a delinquent in case sufficient goods and chattels cannot be found to satisfy a fine or penalty imposed by court martial, is constitutional. People v. Daniell, (1872) 50 N. Y. 274.

Exemptions.— The provisions of the Code of Civil Procedure do not apply in proceedings of court martial held in pursuance of the provisions of the Military Code; and when the sentence of such a court is placed in the hands of an officer for execution, for instance in the collection of fines or penalties duly imposed by such court, it is his duty to levy upon and collect from any property which he may find belonging to the delinquent. Op. Atty.-Gen. (1897) 179, 181.

Cited.— This section was cited in Matter of Cross, (1882) 11 Abb. N. Cas. 230; Welch v. Bard, (1913) 81 Misc. 262, 142 N. Y. S. 26, affirmed 157 App. Div. 943, 142 N. Y. S. 1140, affirmed (1913) 209 N. Y. 304, 103 N. E. 140.

§ 146. Marshals; appointment, bonds and duties. The president of a court-martial or delinquency court may appoint by warrant under his official signature, and at any time remove, one or more marshals, each of whom shall, before entering upon his duties, execute a bond to the state in the penal sum of one thousand dollars, with sufficient sureties, to be approved by the president of the court appointing him, for the faithful performance of his duties and the prompt payment of all moneys collected by him. Each marshal shall perform the usual duties of such marshals, and shall execute any process, mandate or order issued by such president or court, and perform all acts and duties by this chapter imposed on or authorized to be performed by any sheriff, marshal or constable. A bond given as herein provided may be prosecuted for breach of the conditions thereof, in the name of the people, by a judge-advocate, and all moneys recovered shall be paid to the military fund injured.

This section was derived from the Military Law of 1908, § 146.

Powers of sheriff.— It would seem to be the legislative intent that the sheriff, alike with the marshal, shall receive and execute warrants for the collection of fines and other processes as are issued and delivered to them respectively by the president or court. Op. Atty.-Gen. (1911) 106.

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§ 147. Subpœnas, attachments, commissions. Each military court shall have the same power to compel by subpœna, by subpœna duces tecum and by attachment the attendance of witnesses both civilian and military and the production of books, papers and documents and to punish for contempt a witness duly subpœnaed for non-attendance or refusal to be sworn or testify or to produce books, papers and documents as is possessed by the supreme court of this state. Military courts shall also have power to take by commission the testimony of witnesses who can not reasonably be produced at the trial to the same extent as the supreme court aforesaid.

Commissions and subpœnas may be issued and witnessed by the president or judge-advocate, if there be one, of the court, both before and after being sworn for witnesses whose attendance or testimony before such court may be necessary in behalf of the people of this state, and on application in behalf of any person to be tried by such court; and the president or judge-advocate may direct any commanding officer to cause such subpœna to be served on any person under his command.

A witness not appearing in obedience to a subpœna when served personally with a copy of the same, and not having sufficient excuse shall forfeit to the people of the state the sum of twenty-five dollars. The president of each court shall, from time to time, report to the officer ordering the court, the names of all such delinquent witnesses, together with the name and place of residence of the person serving such subpœna, and a judge-advocate may sue for and recover such penalties in the name of the people. Moneys recovered shall be paid to the treasurer of the state to the credit of the adjutant-general of the state, who shall apply the same to the use of the national guard.

This section was derived from the Military Law of 1908, § 147.
Cited.— This section was stated in People v. Hoffman, (1901) 166 N. Y. 462, 60 N. E. 187, 54 L. R. A. 597.

§ 148. Challenges; oaths of members. The form and manner in which the proceedings of military courts shall be conducted and recorded and the forms of oaths and affirmations taken in the administration of military law by such courts, shall in all respects, except as otherwise specially provided herein or in the regulations made hereunder, conform to the law and procedure of the courts-martial of the United States. After the challenges, if any, have

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been made and determined, the president of the court or the judge-advocate shall administer the oath to the members of the court, and the oath shall be administered to him in turn by one of the sworn members. The oath shall be administered in the presence of the accused, unless after notice he fails to appear. In case of a general court-martial, each member shall take an oath to the effect that he will faithfully try and determine, according to evidence, the matter before him, between the people of the state of New York and the prisoner to be tried, and that he will duly administer justice according to the established rules of law for the government of the military forces of the state, and the judge-advocate shall take an oath to the effect that he will faithfully discharge the duties of judge-advocate of such court according to the established rules of law for the government of the military forces of the state Except as otherwise specifically provided in this chapter the president and judge-advocate, if there be one, of every military court and board are authorized to administer all oaths taken by such court or board or by any person or in the course of its proceedings.

This section was derived from the Military Law of 1908, § 148.
Cited.— This section was stated in People v. Hoffman, (1901) 166 N. Y. 462, 60 N. E. 187, 54 L. R. A. 597.

§ 149. Form of mandate; execution by public officers. Military courts are empowered to issue all process and mandates, including writs and warrants necessary and proper to carry into full effect the powers vested in said courts. Such process and mandates may be directed to the marshals of the court, the sheriff of any county and the constables and marshals of any town or city, and shall be in such form as may, from time to time, be prescribed by the governor in the regulations issued by him under this chapter. It shall be the duty of all officers to whom such process or mandate may be so directed to execute the same and make return of their acts thereunder according to the requirements of the same. The keepers and wardens of all city or county jails shall receive the bodies of persons committed by the process or mandate of a military court and confine them in the manner and according to law. Except as otherwise specifically provided in this chapter no fees or charges of any nature shall be demanded or required to be paid by the state or any military

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court or member thereof or person executing its mandate or process by any public officer for receiving, executing or returning any such process or mandate or for any service in connection therewith, or for receiving or confining a person in jail or custody thereunder.

This section was derived from the Military Law of 1908, § 149.

Power of marshal as being exclusive.— There does not seem to be in the statute any language which justifies the construction that it is incumbent upon a marshal to execute all processes issued by such president or court, to the exclusion of the sheriff. Op. Atty.-Gen. (1911) 106.

Cited.— This section was stated in People v. Hoffman, (1901) 166 N. Y 462, 60 N. E. 187, 54 L. R. A. 597.

§ 150. Commitments for disorderly conduct. Any person who shall be guilty of disorderly, contemptuous or insolent behavior in, or use any insulting or contemptuous or indecorous language or expressions to or before any military court, or any member of such a court, in open court, tending to interrupt its proceedings or to impair the respect due to its authority or who shall commit any breach of the peace or make any noise or other disturbance directly tending to interrupt its proceedings, may be committed by warrant under the hand of the president of the court to the jail of the city or county in which said court shall sit, there to remain without bail in close confinement for a time to be limited not exceeding three days and until the jailor's fees be paid.

This section was derived from the Military Law of 1908, § 150.

Cited.— This section was merely cited in Op. Atty.-Gen. (1908) 297.

§ 151. Attendance of judge-advocate; accused may have counsel. In courts of inquiry and general courts-martial, a judge-advocate shall attend. In summary courts and[1] delinquency courts and in garrison courts-martial, the service of a judge-advocate may be dispensed with, and in garrison courts-martial a member of the court may be designated to act as its recorder. In all the courts provided by this chapter the accused shall have the right to the assistance of counsel. Any commissioned officer may be detailed as judge-advocate of a military court.

This section was derived from the Military Law of 1908, § 151. It was amended to read as above by L. 1910, ch. 108, § 6. The amendment is shown in the footnote.

Right to counsel under Military Code.— Even before provision was made on

[1] Words "summary courts and," new.

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this subject it was held that a person prosecuted for an offense before a court martial organized under the laws of this state, could demand as a constitutional right that he be allowed to defend with counsel and that this privilege was not a matter of favor or discretion. People v. Van Allen, (1873) 55 N. Y. 31. See also People v. Phisterer, (1901) 66 App. Div. 52, 73 N. Y. S. 124.

Cited.— This section was merely stated in People v. Hoffman, (1901) 166 N. Y. 462, 60 N. E. 187, 54 L. R. A. 597.

§ 152. Secrecy. The members and judge-advocates of military courts, except summary courts and[1] delinquency courts, shall keep secret the proceedings and sentence of the court until the same shall have been approved or disapproved by the proper officer, and shall always keep secret the vote and opinion of each member of the court unless required to give evidence thereof by a court of justice.

This section was derived from the Military Law of 1908, § 152. It was amended to read as above by L. 1910, ch. 108, § 7. The amendment is shown in the footnote.

Cited.— This section was cited in People v. Hoffman, (1901) 166 N. Y. 462, 60 N. E. 187, 54 L. R. A. 597.

§ 153. Approval, confirmation or disapproval of sentence. The record of the proceedings and sentence of every court martial shall, without delay be delivered to the officer ordering the court or to his successor in command who shall approve or disapprove thereof. When the major-general under the direction of the governor orders a general court-martial, he shall approve or disapprove of the proceedings and sentence thereof and forward the same to the governor and a sentence of such court shall not be carried into effect until confirmed by the governor and then only as so confirmed. The sentence of every military court except summary courts shall be published in orders as approved or modified.

This section was derived from the Military Law of 1908, § 153. It was amended to read as above by L. 1910, ch. 108, § 8, and L. 1915, ch. 90, § 2. The amendment by L. 1910, ch. 108, § 8, omitted the words "the court" which followed the words "The sentence of" in the last sentence, and added in place thereof the words "every military court except summary courts." The amendment by L. 1915, ch. 90, § 2, added the word "confirmation" to the section heading, and added the second sentence.

Cited.— This section was cited in People v. Hoffman, (1901) 166 N. Y. 462, 60 N. E. 187, 54 L. R. A. 597.

§ 154. Revision of proceedings; remission of punishment. Every officer authorized to approve or confirm[2] or disapprove the

[1] Words "summary courts and" new.

[2] Words "or confirm" new.

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proceedings and sentence of a court-martial is authorized to reconvene the court and send back its findings and sentence, or either of them, for revision and to remit, commute or mitigate any punishment awarded by the court.

This section was derived from the Military Law of 1908, § 154. It was amended to read as above by L. 1915, ch. 90, § 3. The amendment is shown in the footnote.

Cited.— This section was cited in People v. Hoffman, (1901) 166 N. Y. 462, 60 N. E. 187, 54 L. R. A. 597.

§ 155. Indemnity for action of military courts. No action or proceeding shall be prosecuted or maintained against a member of a military court or officer or person acting under its authority or reviewing its proceedings on account of the approval or imposition or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any warrant, writ, executions, process or mandate of a military court.

This section was derived from the Military Law of 1908, § 155.

Cited.— This section was cited in People v. Hoffman, (1901) 166 N. Y. 462, 60 N. E. 187, 54 L. R. A. 597.

§ 156. Presumption of jurisdiction. The jurisdiction of the courts and boards established by this chapter shall be presumed and the burden of proof shall rest on any person seeking to oust such courts or boards of jurisdiction in any action or proceeding

This section was derived from the Military Law of 1908, § 156.

Collateral attack.— While the jurisdiction of the delinquency court is open to be attacked, yet when jurisdiction is shown its proceedings cannot be collaterally assailed. People v. Reed, (1892) 64 Hun 453, 19 N. Y. S. 877, affirmed (1894) 142 N. Y. 630, 37 N. E. 565.

§ 157. Naval militia. The provisions of this article shall apply to the naval militia except as otherwise provided in this section. Delinquency courts for officers shall be ordered or caused to be ordered by the governor. Delinquency courts for enlisted men shall be appointed by the commanding officer of each battalion for his command and in case of a division not a part of a battalion by the commanding officer of the naval militia. An officer of the naval militia may be assigned to act as judge-advocate of a general court-martial or court of inquiry. General courts-martial, courts of inquiry and delinquency courts for officers may be wholly or partly composed of officers junior in rank to the officer to be

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tried or investigated where in the judgment of the officer appointing the court the interests of the service so require. Boards appointed for the naval militia shall be composed of officers of such grade or rank as the officer appointing the board may determine for each occasion.

This section was derived from the Military Law of 1908, § 157.

§ 158. Summary courts. Whenever any part of the national guard is on duty under sections one hundred and thirteen, one hundred and fourteen, one hundred and fifteen or one hundred and sixteen of this chapter, or is otherwise on duty so that, by the provisions of this chapter, they are subject to the articles of war of the United States, summary courts for the trial of enlisted men may be appointed by such officers of the national guard as would be entitled to appoint summary courts under the laws and regulations of the United States in case they were officers of the United States army. Such courts shall have jurisdiction over similar persons and have cognizance of similar offenses and shall possess similar power to inflict punishment as like courts have or may hereafter have pursuant to the laws and regulations governing the United States army, except that no sentence of confinement or imprisonment in a guard house, jail or prison shall be for a longer term than until the expiration of the tour of duty of the organization or detachment of which the prisoner is a member or with which he is serving. The officer holding a summary court need not be sworn, no charges or specifications need be served upon the accused and no record of the testimony introduced before said court need be taken. Said courts shall have power to administer oaths and shall possess the same powers to compel the attendance of witnesses and the production of evidence as are specified in section one hundred and forty-seven of this chapter. Where not inconsistent with the provisions of this chapter the procedure of said courts shall be similar to that of summary courts in the United States army. The commanding officers authorized to approve the sentences of summary courts and superior authority shall have power to remit or mitigate the same. Nothing herein contained shall be construed to invest a summary court with exclusive jurisdiction over any person or offense, nor to impair or affect the jurisdiction, power or authority of any other military court.

New. Added by L. 1910, ch. 108, § 9.

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ARTICLE 8

Arms, Uniforms and Equipments for the National Guard and Naval Militia

Section 165. Organizations.
166. Commissioned officers.
167. Enlisted men.
168. Full-dress uniform.
169. Responsibility for public property.
170. Purchase of uniforms and equipments.
171. Purchases from the United States.

§ 165. Organizations. The active militia shall be provided by the state with such arms, equipments, colors, camp and garrison equipage, books of instruction and of record, and other supplies, as may be necessary for the proper performance of the duty required by this chapter; and each command shall keep such property in proper repair and in good condition.

This section was derived from the Military Law of 1908, § 165.
Cited.— This section was merely stated in Op. Atty.-Gen. (1897) 263.

§ 166. Commissioned officers. Every commissioned officer shall provide himself with the arms, uniforms and equipments prescribed and approved by the governor.

This section was derived from the Military Law of 1908, § 166.
Unlawfully wearing uniform: see Penal Law, § 1484.

§ 167. Enlisted men. Every enlisted man who enters the service of the state for five years, shall be furnished by the state with a state uniform of such description as the governor shall approve; but such uniform shall not be furnished to enlisted men of organizations, which at this date have not accepted the uniform provided by the state, except at their special request approved by the governor.

This section was derived from the Military Law of 1908, § 167.
Unlawfully wearing uniform: see Penal Law, § 1484.

§ 168. Full-dress uniform. Any command may, with the consent of the governor, adopt a full-dress uniform of its own and at its

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own expense. To such command such portions of the state uniform may be issued as the governor may direct. A squadron of cavalry which has adopted a full-dress uniform of its own under this section shall have the right to continue its use upon becoming part of a regiment and any additional troop or troops of the same regiment that may be permanently quartered in the armory of such squadron shall with the consent of the commanding officers of the regiment and squadron have the right to adopt the same full-dress uniform for such time as they are so quartered.

This section was derived from the Military Law of 1908, § 168. It was amended to read as above by L. 1912, ch. 67, and L. 1913, ch. 272. The amendment by L. 1912, ch. 67, added the third sentence to and including the word "regiment." The amendment by L. 1913, ch. 272, added the concluding part of the third sentence beginning with the words "and any additional troop."

§ 169. Responsibility for public property. Every officer and enlisted man to whom public property of the state has been issued, shall be personally responsible to the state for such property, and no one shall be relieved from such responsibility, except it be shown to the satisfaction of the governor that the loss or destruction of such property was unavoidable and in no way the fault of the person responsible for the same; in all other cases the value of the property lost or destroyed in the amount determined by a board as herein provided shall be charged against the person at fault or to the command to or for which it had been issued, and if not relieved from such charge by the governor, it shall be an indebtedness from such person or command to the state. The value of lost or destroyed property and the person or command to be charged therewith, shall be determined by a board to consist either of an inspector on the staff of the major-general or the commanding officer of the naval militia, or of a disinterested officer who shall be appointed by the major-general or the commanding officer of the naval militia to serve on such board, and the commanding officer of the organization in which such property is lost. In case of disagreement a third officer, not below the grade of major, shall be appointed, by the major-general or the commanding officer of the naval militia, and a decision of a majority of the board so constituted shall be final. Where the amount determined by such board as the value of lost or destroyed property is charged to a person it shall be deducted from any pay or allowance due or to

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become due to him from the state, and where it is charged to a command it shall be deducted one-half in successive calendar years from any allowance or money due or to become due to it from the state, except that on the disbandment of a command any such indebtedness then existing and such as may be charged to it upon a final settlement of property accounts shall, as soon as determined, be paid out of its military funds or unexpended appropriations. An action may be maintained by the people of the state in any court having jurisdiction thereof by the attorney-general upon the request of the adjutant-general of the state to recover any such indebtedness from a person to the state remaining unpaid at the expiration of one year from its determination by a board under this section.

This section was derived from the Military Law of 1908, § 169.

Loan or other disposition of arms.— In an early case, it was held that the commissary-general had no authority to lend the arms of the state or to make any other disposition of them save such as was specially authorized by statute. State v. Buffalo, (1842) 2 Hill 434.

§ 170. Purchase of uniforms and equipments. The adjutant-general of the state shall advertise for bids in the manner provided in subdivision seven, section sixteen of this chapter, for the furnishing and making of the articles of uniform, equipment, military and naval supplies, in accordance with the regulations approved by the governor and specifications adopted by the state. Bidders shall be informed of the kind, quantity and quality of articles required and of the time, place and rate at which they are to be delivered. Bidders shall also be furnished with such specifications as have been adopted, and will be permitted to examine the standard samples at the places where deposited. No accounts for furnishing uniforms, equipment or military or naval supplies, shall be audited unless accompanied by the certificate of an inspector detailed by the major-general or by the commanding officer of the naval militia, to the effect that the material used is of the quality prescribed by the governor and that the articles are well made as specified in the contract under which they are supplied.

This section was derived from the Military Law of 1908, § 170.

Purchase from prisons.— Prior to the enactment of L. 1898, ch. 212, it was ruled that as the militia of the state and the office of adjutant-general constituted a department of the state government, it followed that upon the proper officials of that department devolved the duty of complying with the

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section in respect to making to the commissioner of prisons an estimate of the amount of supplies required for use of the militia and for the office of the adjutant-general of all articles that could be furnished by the penal institutions of the state. If the commissioner should thereupon certify that such articles could not be furnished, the same might be purchased elsewhere, but otherwise no claims for such supplies should be audited or paid by the comptroller of the state. Op. Atty.-Gen. (1897) 263. But after the enactment of L. 1898, ch. 212, it was held that military and naval supplies need not be purchased from prisons. Op. Atty.-Gen. (1899) 155.

§ 171. Purchases from the United States. The governor may authorize the purchase of articles of uniform, equipment, military and naval supplies from the United States, according to the statutes of the United States applicable thereto, in his discretion, any existing statutory requirement of this state to the contrary notwithstanding.

New. Added by L. 1914, ch. 161.

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ARTICLE 9

Armories

Section 175. Definition of armory.
176. Brigade districts.
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192. Use of armories.
193. Annual estimate for maintenance.
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195. Inventory of property and accountability therefor.
196. Disposal of useless property.
197. First estimate for maintenance to cover expenses for eighteen months.
198. Temporary provision for a new armory or additional employees.

§ 175. Definition of armory. The word armory whenever used in this article shall include any building or portion thereof, quar-

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ters or accommodations devoted to the use of the organized militia, including suitable stable and stabling accommodations.

New. Added by L. 1913, ch. 558, § 2.

§ 176. Brigade districts. For the purpose of constructing, renting, altering, repairing, enlarging, equipping, furnishing and maintaining armories outside of the city of New York for the use of the organized militia, the territory of the state outside of the city of New York shall be divided into two districts, one to be known as the third brigade district and the other as the fourth brigade district. For said purposes, the third brigade district shall be composed of and comprise the following named counties: Albany, Broome, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Montgomery, Nassau, Oneida, Orange, Otsego, Putnam, Rensselaer, Rockland, St. Lawrence, Saratoga, Schenectady, Schoharie, Suffolk, Sullivan, Ulster, Warren, Washington, Westchester, and the fourth brigade district shall be composed of and comprise the following named counties: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Cortland, Erie, Genesee, Livingston, Madison, Monroe, Niagara, Onondaga, Ontario, Orleans, Oswego, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming, Yates.

New. Added by L. 1913, ch. 558, § 2.

Cited.— In Op. Atty.-Gen., dated Feb. 7, 1916, this section was cited on the question of raising funds for the temporary rental of an armory. See 6 St. Dept. Rep. 484. And see infra, § 198 note.

§ 177. Expenses of armories, equipment and maintenance, a charge on the counties of the brigade district in which located. The expenses of erecting, altering, repairing, enlarging, renting, equipping, furnishing and maintaining armories including providing camp stools and chairs of a sufficient number, telephone service, lavatories, bath, water and wash closets, and the necessary apparatus, fixtures and means for heating, lighting and ventilating armories and for properly preserving the arms, uniforms, harness, wagons, equipments, books, papers, records and furniture kept therein and the construction of suitable lockers, closets, gun racks, desks and cases, and the compensation of all employees authorized by this chapter and the purchase of all tools, utensils, materials, supplies, appliances and facilities necessary

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for the cleaning, care, proper keeping, maintenance and preservation of the armory or portion thereof used or occupied by the organizations therein quartered or the arms, uniforms, equipments, books, papers, records and furniture used and kept by said organization in such armory and the expense of repairing, renewing, replacing or maintaining pavement of streets or gutters, curbing, flagging of sidewalks, fences, sewers and water pipes and their connections in, on or connected with the site upon which an armory is located,[1] shall be a charge upon the counties composing the brigade district within the bounds of which is located any arsenal or armory occupied by the national guard or naval militia, and, when apportioned as in this chapter provided, shall be levied, collected and paid in the same manner as other county charges are levied, collected and paid.

New. Added by L. 1913, ch. 558, § 2. It was amended to read as above by L. 1915, ch. 290, § 1. The amendment is shown in the footnote.

Power to impose liability on counties.— Section 3 of article XI of the Constitution does not prevent the legislature from making the expense of maintaining parts of the national guard within their borders in part county charges, and the method of apportionment is within the discretion of the legislature. Bryant v. Palmer, (1897) 152 N. Y. 412, 46 N. E. 851, affirming 15 App. Div. 86, 44 N. Y. S. 301. The constitutional provision requiring the legislature at each session to make sufficient appropriations for the maintenance of the national guard was designed merely to insure such maintenance, not to restrict the matter thereof to legislative appropriations, and therefore the provision that the compensation of janitors and armorers of national guard armories shall be a county charge is constitutional. Goedel v. Palmer, (1897) 15 App. Div. 86, 44 N. Y. S. 301, affirmed (1897) 152 N. Y. 412, 46 N. E. 851.

Audit of county charges.— Bills incurred in the maintenance of armories pursuant to the Military Law are not subject to the audit of the board of supervisors but are to be paid as and when audited by the officer making the requisition and the county treasurer or other fiscal officer of the county having custody of the fund to be disbursed therefor. Op. Atty.-Gen. (1912) 50.

Reduction of supervisors.— The board of supervisors has no power to reduce the amounts which are certified to it by the armory commission or the officer in charge or control of the armory. Op. Atty.-Gen. (1910) 601.

Insurable interest of county.— The attorney-general has ruled that a county has an insurable interest in the boilers in an armory, and in the event of a casualty occurring by the bursting of such boilers the expenses of repairs would be a county charge. The county also has a right to indemnify itself against such loss by insurance, and it would have a right to recover upon insurance of the boilers in the event of an injury, to a sum within the amount of the policy sufficient to reimburse it for any payments it might be compelled to make in replacing them. Op. Atty.-Gen. (1903) 502.

Arsenals as armories.— The words "armory" and "arsenal" are synonymous as far as pertains to the obligation to furnish needed supplies. Op. Atty.-Gen. (1900) 278, 282. Formerly it was held that the omission of the

[1] Words "and the expense of repairing, renewing . . . site upon which an armory is located," new.

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word "arsenal" from the sections of the Military Code, which made the cost of the maintenance of armories a local charge, was significant of the intention of the legislature not to make the expenses for the maintenance of the arsenal a local charge. Op. Atty.-Gen. (1907) 393.

Fire exits.— It would seem that expense of the alteration for providing proper fire exits is by the statute a county charge and that the board of supervisors is required to levy, collect and pay it in the same manner as other county charges upon receiving the certificate with the approval of the armory commission. Op. Atty.-Gen. (1910) 592.

Temporary approaches.— The determination of the necessity for temporary approaches and the authority to contract for the construction of such approaches — lies with the armory commission. Op. Atty.-Gen. (1907) 395, 401.

Local assessment of armories.— The state does not appear to be liable for assessments for local improvements to a state armory, including paving. Since 1888 such charges should be made against the county and not the state. Op. Atty.-Gen. (1900) 138.

Water rents.— The state is not chargeable with water rents assessed against state arsenals, unless specifically charged by statute. Op. Atty.-Gen. (1900) 278.

Cited.— In Op. Atty.-Gen., dated Feb. 7, 1916, this section was cited on the question of raising funds for the temporary rental of an armory. See 6 St. Dept. Rep. 484. And see infra, § 198 note. Former section 177 was cited in Op. Atty.Gen. (1913) 703; Op. Atty.-Gen. (1908) 305.

§ 178. Ascertaining, apportioning and collecting funds for armory purposes. The officers required to approve the annual estimates of officers in charge and control of armories outside of the city of New York shall annually, during the month of September in each year, file, with the armory commission of the brigade district in which such armories are located, a certificate, showing the amounts required by the several armories of the district for the next fiscal year. The armory commission shall, during the month of September in each year, determine the amount required for the next fiscal year for the construction, alteration, repair, enlargement, renting and equipping armories within said brigade district. The amount so certified to the commission and the amount so determined by it for the purposes aforesaid shall be a charge upon the several counties of the brigade district and, during the month of October of each year, shall be by said armory commission apportioned among such counties according to the aggregate amount of assessment for each county within the brigade district as fixed by the state board of equalization. The armory commission shall, during the month of October in each year, certify to the comptroller of the state the amount each county within said brigade district shall pay and also the amounts required for the maintenance of each armory of the brigade district and to

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what county treasurers such amounts are to be transmitted when collected, and the amount to be retained by the state treasurer to the credit and subject to the order of the armory commission of the district. On or before the first day of November of each year, the comptroller shall mail to the county clerk and to the chairman and clerk of the board of supervisors of each county a statement of the amount each county shall pay and such amount so certified to the several counties shall be a portion of the county charges of each of such counties and shall be levied and collected and paid as other county charges are levied, collected and paid. Such amounts shall be paid by the several county treasurers into the treasury of this state on or before the fifteenth day of May following, to be held by the treasurer and disbursed by him as follows: On or before the first day of June in each year the comptroller shall draw his warrants on the state treasury in favor of the several county treasurers of the brigade district, for the amount required for the maintenance of each armory of the brigade district as certified to him by the armory commission and the amounts required shall be transmitted to the several county treasurers designated by the armory commission to receive the same, which amounts shall be expended for the maintenance of the several armories as provided for in this chapter. The amount raised for the construction, alteration, repair, enlargement, renting and equipping armories within each district shall be paid upon the warrant of the comptroller, upon the certificate of the armory commission for the purposes hereinabove specified. The armory commission in preparing its certificate to be presented to the comptroller shall deduct from the amount required by the estimate of the officer in charge and control of any armory, as approved, such balance as the treasurer of the county where such armory is located may have certified to be in his hands to the credit of such armory maintenance fund remaining from the appropriation of the preceding fiscal year. The fiscal year, for the purposes of this chapter, shall begin on the first day of July and end on the thirtieth day of June of the succeeding year.

New. Added by L. 1913, ch. 558, § 2.

Cited.— This section was cited in Op. Atty.-Gen. (1913) 703, 704. In Op. Atty.-Gen., dated Feb. 7, 1916, this section was cited on the question of raising funds for the temporary rental of an armory. See 6 St. Dept. Rep. 484. And see infra, § 198 note.

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§ 179. Armory commission to furnish armories. Whenever it shall appear by the certificate of the commanding officer of the national guard or of the naval militia that an organization of his command has at least the minimum number of enlisted men established by law who legally can be required to perform the duties prescribed thereby, the armory commission of the brigade district in which such organization is located, shall, upon the demand of the commanding officer of such organization of the national guard approved by the colonel of the corps of engineers or the ranking officer commanding the artillery district, or the commanding officer of the separate squadron or battalion or the commanding officer of the regiment to which such organization belongs or is attached, together with the approval of the chief of coast artillery or commanding officer of the briagde to which such organization belongs or is attached and the commanding officer of the national guard, or in case such organization of the national guard shall not belong or be attached to a battalion, regiment or brigade, with the approval of the commanding officer of the national guard alone, and in case of the naval militia upon the demand of the commanding officer of the organization thereof, approved by the commanding officer of the battalion to which it belongs or is attached and of the commanding officer of the naval militia, or if such organization is not part of a battalion upon the approval of the commanding officer of the naval militia alone, erect or rent and equip, within the boundaries of such brigade district, for the use of such organization, a suitable and convenient armory, drill room and place of deposit for the safe keeping of the arms, equipment, accoutrements, uniforms and military property furnished under the provisions of this chapter. The size, suitability and convenience of such armory, drill room, place of deposit and the suitability and convenience of the equipment shall be determined by the commanding officer of the brigade to which the organization of the national guard demanding such armory belongs or is attached, or by the major-general if the organization of the national guard is not attached to a brigade, or in the case of the naval militia by the commanding officer thereof. The erection, repairs, alterations and equipment of all buildings or accommodations erected or rented at the expense of a brigade district shall be made under the direction and supervision of an inspector appointed by the armory commission of the brigade district. This

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section shall not apply to or affect any portion of the several counties lying within the boundaries of the city of New York.

New. Added by L. 1913, ch. 558, § 2.

Cited.— In Op. Atty.-Gen., dated Feb. 7, 1916, this section was cited on the question of raising funds for the temporary rental of an armory. See 6 St. Dept. Rep. 484. And see infra, § 198 note.

§ 180. Armories and headquarters; how provided for or constructed. Whenever the armory commission shall deem it expedient that an armory be provided for the use of one or more organizations of the national guard or naval militia or for a brigade, regimental, separate battalion or squadron headquarters, the armory commission of the brigade district in which such organization or organizations or headquarters is located shall, except when such accommodation is provided in a state arsenal or armory,[1] erect or rent and equip in such brigade district a suitable and convenient armory or provide suitable accommodations and equipment for such headquarters. [2]When two or more armories are located in one building the armory commission shall designate and apportion the quarters of each organization and regulate the use of the entrances, drill floors, basements and storage spaces of such building. Whenever in the opinion of the officer in charge and control of any armory or headquarters, the same shall be unfit for use as an armory or headquarters, he may make complaint to the armory commission; such commission forthwith shall make or cause to be made an examination of such armory or headquarters, and, if after such examination the commission shall decide that such armory or headquarters is unfit for use, it shall immediately direct the alteration, repair, enlargement or abandonment of the same, and, in case of an abandonment, provide another suitable armory or headquarters. Headquarters when provided shall be deemed for all purposes an armory within the meaning of that word whenever used in this chapter. This section shall not apply to or affect any portion of the several counties lying within the boundaries of the city of New York.

This section was derived from the Military Law of 1908, § 180, the section heading then reading "Supervisors to furnish armories." It was amended to read as above by L. 1913, ch. 558, § 3, and L. 1914, ch. 162, § 1. The amendment by L. 1913, ch. 558, § 3, changed the section head to read as given in the text, and materially amended the section. The amendments by L. 1914, ch. 162, § 1, are shown in the footnotes.

[1] Words "or armory," new.

[2] Following sentence new.

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Injury to arsenal or armory or property therein: see PENAL LAW, § 1426, subd. 13.

Power to let contracts.—As the legislature has created the armory commission and directed and empowered it to take charge of the execution and completion of all armories authorized by the state to be built, there being no other statute in force vesting this power in any other person or body politic, the armory commission has the sole power and authority to let contracts for such work. Op. Atty.-Gen. (1907) 395, 400.

Power of supervisors.— Under the County Law the supervisors have no authority in the matter of furnishing armories. Op. Atty.-Gen. (1907) 395.

Expense of abating nuisance on armory grounds.— The expense of abating a nuisance, such, for example, as a pond of stagnant water, on armory grounds, should be borne by the county in which the armory is situated; it is not payable out of an appropriation made by the state for repair and improvement of armories. Op. Atty.-Gen. (1893) 406.

Lowest "responsible" bidder.— The word "responsible," as used in former section 182, was held to mean not merely financial responsibility, but to import also that there shall be no substantial question as to the reliability of the bidder, in the sense that he might be depended upon to complete the contract which he proposed in accordance with its provisions. Op. Atty.-Gen. (1905) 314.

Cited.— In Op. Atty.-Gen., dated Feb. 7, 1916, this section was cited on the question of raising funds for the temporary rental of an armory. See 6 St. Dept. Rep. 484. And see infra, § 198 note.

§ 181. Armories to be altered, repaired and equipped by armory commission. In case expenditure is required for altering, repairing or enlarging any armory or for equipping the same with apparatus for heating, lighting or ventilating, lavatories, bath, water or wash closets or for lockers, gun racks or closets and other appliances and facilities, the necessity for such expenditure may be certified to the armory commission by the officer in charge and control of the armory or the officer in command of the organization to be quartered therein. If the armory commission shall approve such expenditure, it shall cause the work to be performed or the material to be furnished or the accommodations to be provided. The armory commission shall cause to be inspected all work performed and material or articles furnished or quarters provided pursuant to such certificate and no money shall be paid for such work, materials, articles or quarters until the armory commission shall certify that such work has been properly performed and said materials and supplies are of proper quality and workmanship and such quarters suitable and adequate. This section shall not apply to armories owned by the city of New York.

This section was derived from the Military Law of 1908, § 181, the section head then being "Local armories." It was materially amended to read as above by L. 1913, ch. 558, § 3.

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Power to contract for expenditures.— Under a statute not specifically providing for contracts for expenditures, it was held that the commanding officer of an armory, vested with power to make requisitions on the armory commission for the expenditures, had power to enter into contracts making necessary such expenditures. Op. Atty.-Gen. (1908) 306. Formerly by a special statute the armory commission was deprived of its power to let contracts for certain armories, the power being vested in the board of supervisors, but the statute had no retroactive effect on existing contracts. Op. Atty.-Gen. (1908) 306.

§ 182. Headquarters for regiments and battalions composed of divisions, separate troops or companies. The armory commission shall, when practicable, provide in state arsenals or armories headquarters for regiments composed of separate troops, batteries or companies, and for battalions, and squadrons not parts of regiments composed of separate troops, batteries or companies and quarters for the field and staff officers, the non-commissioned staff officers and detachments attached to such organizations. Whenever it shall appear to the armory commission of the third or fourth brigade districts that headquarters or quarters cannot be provided in a state arsenal or armory for the organization, officers, non-commissioned staff officers or detachments hereinbefore specified it shall be the duty of the armory commission of the brigade district in which said headquarters or quarters is, or is to be located, to provide, upon the demand of the commanding officer of the organization requiring such headquarters or quarters, approved by the commanding officer of the brigade to which such organization is attached or the major-general, or the commanding officer of the naval militia, suitable and convenient headquarters or quarters. Headquarters or quarters, when provided, shall be deemed for all purposes an armory within the meaning of that word whenever used in this chapter, and the other provisions of this article, except as herein modified, shall apply to said headquarters and quarters. The expenses for rent, heat, light, water supply and telephone service shall not exceed annually the sum of seven hundred dollars for the headquarters of a regiment; four hundred and fifty dollars for the headquarters of a battalion or squadron not part of a regiment; three hundred dollars for other quarters. An armorer may be appointed for such headquarters or quarters who shall receive compensation to be fixed by the officer appointing him at not exceeding the following sum annually: For the headquarters of a regiment, five hundred dollars; for the headquarters of a battalion or squadron, not part of

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a regiment, four hundred dollars; for other quarters, two hundred dollars.

Materially amended to read as above by L. 1913, ch. 558, § 3. Before this amendment the section, which was derived from the Military Law of 1908, § 182, related to "Expenses of erection, improving and furnishing armories."
Former provisions.—The former provisions of this section are now substantially embodied in section 177 et seq.

§ 183. Armories in the city of New York. In the city of New York the applications of commanding officers of regiments, battalions, squadrons, troops, batteries, field hospitals, ambulance companies, companies of signal corps, the colonel of the corps of engineers or the ranking officer of the coast artillery commanding an artillery district located in said city, for suitable armories and for the furnishing thereof when first erected, and for alterations and enlargements of armories and the applications of the major-general, commanding officer of the naval militia, an officer commanding a brigade or an officer commanding a battalion composed of separate troops, batteries or companies therein, for suitable accommodation for brigade or other headquarters, shall be made to a board herein termed the armory board, and to consist of the mayor, the comptroller, the president of the board of aldermen, the two senior ranking officers of or below the grade of brigadier-general, in command of troops of the national guard quartered in said city, the commanding officer of the naval militia and the president of the department of taxes and assessments. If the armory board approve such an application, it shall make its recommendation to the commissioners of the sinking fund, who, if they concur therein, shall specify the sums to be appropriated therefor, and such sums shall be included by the comptroller of said city in his departmental estimates for the ensuing year, and the board of estimate and apportionment and the board of aldermen are hereby directed to include such sums in the budget for the ensuing year; or the commissioners of the sinking fund may, from time to time, in their discretion authorize and direct the comptroller of the city to issue corporate stock of the city in such amounts as shall be necessary to provide such sums or any part thereof, and the mayor and comptroller of the city are authorized and directed to sign such stock, which shall be redeemable in not more than fifty years from the date of issue, and shall bear interest at such rate as the board of commissioners of the sinking

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fund may prescribe. It shall be the duty of the city clerk to attest such stock and seal the same with the common seal of the city, and the board of estimate and apportionment and the board of aldermen are hereby authorized and directed to cause to be raised upon the property, subject to taxation in the city of New York, such sums of money as may be required to pay the interest on such stock and redeem the same at maturity. The work necessary to be done and the materials necessary to be furnished for erecting armories, and for the furnishing thereof when first erected, and for alterations and enlargements of armories, as in this section above provided, shall be done and furnished respectively under the direction and supervision of the armory board, under contracts made at public letting pursuant to the general provisions of law as to public contracts in the city of New York. The comptroller is authorized and required to pay, on the requisition of the armory board, the amount certified by it, from time to time to be due in such manner as he shall direct, and the amount of any appropriation or bond issue shall not be exceeded in incurring expenditures under this section. The commissioners of the sinking fund may also, in their discretion, appropriate any plot or plots of land belonging to the city and not already appropriated to some other public use, as locations on which armory buildings may be erected. The title to property acquired under this section through the approval of the commissioners of the sinking fund shall be vested in the corporation of the city of New York. All repairs to, and, except as above provided, all furnishing of, armories in the city of New York, shall be done by said city, and all utensils, materials and supplies certified by the auditing board of an organization, corps or artillery district quartered therein to be necessary for the cleaning, care and preservation of the portion of the armory used or occupied by said organization, corps or artillery district, or of the arms, uniforms, equipments and furniture used or kept by said organization, corps or artillery district, in such armory, shall be supplied by said city, as hereinafter in this section provided. The commanding officer of each organization, corps or artillery district of the active militia quartered in the city of New York, and the secretary of the armory board,[1] shall, before the first day of September in each year, prepare and submit to the armory board an itemized

[1] Words "and the secretary of the armory board," new.

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estimate of the necessary expenditures to be made during the ensuing year for repairs to and furnishing of armories and utensils, materials and supplies to be furnished by said city, and for administration by the armory board.[1] On or before the twentieth day of September in each year, the armory board shall revise said estimates of the commanding officers and of the secretary of the armory board[2] and determine the amount necessary to be expended for the purposes aforesaid in the ensuing year. Such determination shall be made in detail, specifying as separate items the amounts to be expended on each armory and for each organization, corps or artillery district, for repairs, furnishing, utensils, supplies and other expenditures to be made by said city, and for administration by the armory board,[1] and said board shall thereupon, and before October first, certify the amounts so fixed, and determined in detail by said board to the board of estimate and apportionment, and the said board of estimate and apportionment and the board of aldermen shall include said amounts as determined in detail, as aforesaid, in the final budget for the ensuing year. The amounts so appropriated shall be expended on the armories and for the organizations, corps or artillery districts and for the administration by the armory board,[3] for which the same were respectively appropriated by and under the direction of the armory board, which shall, from time to time, as may be necessary, advertise in the city record and the corporation newspapers for not less than ten days for all utensils, supplies, work, labor and materials, and shall award contracts for the same to the lowest bidders, who shall give adequate security for the faithful performance of such contracts, except that in case of an emergency said board may cause repairs, utensils, supplies, work, labor and materials[4] immediately required to be done or furnished[5] without calling for competition at an expense not exceeding one thousand dollars in any one instance. No payment shall be made by the comptroller from the appropriation aforesaid, except as follows: In the case of supplies upon the written approval of the claim by

1 Words "and for administration by the armory board," new.
2 Words "of the commanding officers and of the secretary of the armory board," new.
3 Words "and for the administration by the armory board," new.
4 Words "utensils, supplies, work, labor and materials," new.
5 Words "or furnished" new.

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the commanding officer of the organization, corps or artillery district, or the colonel of the corps of engineers receiving the supplies, and in case of expenditures upon an armory for whatsoever purpose made, upon like approval by the ranking line officer commanding an organization, corps or artillery district quartered therein.

This section was derived from the Military Law of 1908, § 183. It was amended to read as above by L. 1911, ch. 102, § 1, and L. 1912, ch. 165. The amendment by L. 1911, ch. 102, § 1, changed the word "hospital," near the beginning of the section, to "hospitals." The amendments by L. 1912, ch. 165, are shown in the footnotes.

General control and support.— While the armories erected by the state of New York and known as state armories, are entirely under the supervision of an armory commission, those erected pursuant to this section in the city of New York are under the control of the armory board of that city. The armory commission of the state does not seem to have any supervision over such armories; and all expenses attending the armories under the charge of the armory board should be borne by the city of New York, and no part thereof is chargeable to the state. Op. Atty.-Gen. (1899) 173. See also Op. Atty.-Gen. (1905) 321; Op. Atty.-Gen. (1909) 495.

Determination as to emergency.— Where the armory board, including the president of the board of aldermen, in good faith ratified and accepted the act of its secretary in ordering repairs as emergency work and approved the bills therefor, their action amounted to a determination that the work actually done was emergency work; and by that determination, in the absence of bad faith, the city was bound, the aggregate of the bills being less than one thousand dollars, and there being on hand a sufficient balance of the appropriation to meet the same. Moriarty v. New York, (1911) 142 App. Div. 717, 127 N. Y. S. 524, reversing 59 Misc. 204, 110 N. Y. S. 842.

Letting contracts.— Under the Military Code, the purchase of coal for the heating of the armories of New York city without advertising for bids and letting the contract to the lowest bidder did not render the city liable for the payment of the same within the meaning of the statute authorizing the armory board to cause "repairs" to be made which were immediately required not exceeding one thousand dollars without calling for competition. Lewis v. New York, (1905) 106 App. Div. 454, 94 N. Y. S. 710. This section as now amended includes supplies.— *Ed.*

Cited.— This section was merely cited in Horgan v. New York, (1906) 114 App. Div. 555, 100 N. Y. S. 68.

§ 184. New sites for armories in the city of New York. The armory board mentioned in the last preceding section is authorized and empowered, subject to the approval of the commissioners of the sinking fund of the city, to select, locate and lay out such and so many sites for armories within such city as such board and the commissioners of the sinking fund shall, from time to time, deem necessary to be acquired. No site shall be located in any park or public place or on land now occupied by a reservoir; [1]provided, that this prohibition shall not apply to the

[1] Remainder of sentence new.

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location of sites for the naval militia. When the armory board shall have selected a site, it shall cause a survey, map or plan thereof to be prepared, and shall submit the same with such other information as it may deem necessary, to the commissioners of the sinking fund for their approval or disapproval. If the commissioners of the sinking fund shall approve of such site and consent to the acquisition thereof for the purpose of an armory, such approval and consent shall be indorsed upon or attached to such survey, map or plan, and shall be signed by not less than a majority of such commissioners, of whom the comptroller must be one. Such survey, map or plan, with such approval and consent indorsed upon or attached to it, shall be filed in the office in which conveyances of real estate are required to be recorded in the county in which such armory site is located and a true copy thereof certified to by the chairman of the armory board and the president of the board of aldermen, shall be filed in the office of the armory board. The survey, map or plan provided for in this section shall be made by the comptroller of the city of New York, upon the requisition of the armory board, and the expense thereof shall be charged against and paid out of any appropriation made for the finance department in the discretion of the comptroller.

Whenever and as often as any site, so as aforesaid selected by said armory board, shall have been approved by the commissioners of the sinking fund and duly certified as hereinbefore provided, and the survey, map or plan certified, the said armory board may, with the approval of the board of estimate and apportionment, purchase said site, or by the corporation counsel of said city make application to a special term of the supreme court in either the first or second department for the appointment of three discreet and disinterested persons being residents of the city of New York, as commissioners of estimate, whose duty it shall be to make a just and equitable estimate of the loss and damage to the respective owners, lessees, parties and persons respectively entitled to or interested in the said lands, tenements, hereditaments and premises, and to make report thereof to the said supreme court with due diligence. Except as herein otherwise provided the proceedings to acquire such title shall be the same as are prescribed for the acquisition of lands and interests therein for public purposes by section twenty-one of chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-seven,

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known as the Greater New York charter, and with like effect, but where commissioners of appraisal have been appointed by the supreme court prior to the time of the taking effect of this chapter, the proceedings in which such appointments have been made shall be conducted in all respects as if this chapter had not been passed. The counsel of the corporation of the city of New York shall act as attorney for the armory board in such proceedings. The title to any property acquired in any such proceedings shall be vested in the city of New York.

The damages and expenses incurred in the proceedings for the acquisition of the title to any such site shall be met and paid by the city of New York, under or pursuant to the provisions of the last preceding section.

The method prescribed in this section for the acquisition of sites for armories in the city of New York shall not be deemed to be exclusive of the method prescribed by the last preceding section.

This section was derived from the Military Law of 1908, § 184. It was amended to read as above by L. 1911, ch. 381. The amendment is shown in the footnote.

§ 185. Acquisition of cities and additional lands for armories by boards of supervisors. The board of supervisors of any county in which any state armory is now to be built or is hereafter required to be erected for the use of the active militia in such county, is authorized and required upon the requisition of the armory commission to purchase a suitable site for the erection of such armory, to be approved by the armory commission, the title to which shall be taken in the name of and be vested in the people of this state. The board of supervisors of any county in which any state armory now is, shall, on like requisition purchase such lands adjoining the site of such armory as the armory commission may deem proper; a description of such lands shall be filed by the armory commission with the board of supervisors of such county, and the title thereto shall be taken in the name of and be vested in the people of this state. If such board is unable to agree for the purchase of such site or such adjoining lands with the owners thereof, the chairman of such board shall acquire title to such property in the name of the people of the state under the condemnation law, and such

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board, when notified by its chairman that any land has been purchased or acquired pursuant to law, shall appropriate such sums as shall be necessary for the payment of the purchase price or cost of such property, together with the cost of acquiring the title thereto, and for the grading, filling, excavating, draining, paving of streets or gutters, curbing, flagging of sidewalks, fencing such property, sewer and water pipes and their connections, which shall be charged against said county and shall be levied, collected and paid as are other county charges. The board of supervisors may, by resolution, authorize the issuance and sale of bonds of the county for paying the purchase price or cost of such property, together with the cost of improving the same as herein mentioned and the cost of acquiring the title thereto.

Whenever any real property is taken for the purpose of erecting a state armory thereon, the buildings on such property or the old materials in the same, may be sold by the armory commission at public or private sale for the best price that can be obtained and the net sum realized therefrom shall be paid to the county treasurer of said county for the use of the county.

This section was derived from the Military Law of 1908, § 185, the section head reading "Acquisition of sites by boards of supervisors." It was amended to read as above by L. 1912, ch. 296; L. 1913, ch. 558, § 4; L. 1915, ch. 290, § 2. The change in the section head to the wording given in the text was made by L. 1912, ch. 296.

Title to armories.— The title to an armory is vested in the state, notwithstanding the fact that the county furnished funds for the erection and maintenance of the building. Matter of Burns, (1904) 98 App. Div. 507, 90 N. Y. S. 254.

Local assessments.— The state was held liable for assessments for paving a street opposite a state armory and for erecting street lights and for flushing the pavements in front of the armory, where the provisions of statute relative to such assessments had been complied with and the armory was already in existence, as this section applies only to armories thereafter erected. Op. Atty.-Gen. (1913) 700.

§ 186. Control of armories. Where a regiment, field hospital, ambulance company, company of signal corps, troop, battery, separate division or the headquarters of the division or a brigade or a battalion not part of a regiment occupies a portion of an armory or arsenal, such headquarters and quarters shall each be considered an independent armory upon the approval and the certificate of the commanding officer of the brigade to whose command the organization occupying such armory belongs or of the major-general for organizations attached to the headquarters of the

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division. The armory of the corps of engineers shall be under the charge and control of the colonel thereof; armories of the signal corps shall be under charge and control of the senior signal officer quartered therein; the armory of a field hospital or ambulance company shall be under the control of the medical officer commanding it. The armory of every other regiment or corps or of the unit or units thereof quartered therein shall be under the charge and control of the senior line officer thereof quartered therein.

Commanding officers shall deposit in the armories provided for their organization all military property received by them from time to time for the use of their respective commands. The adjutant-general of the state, the major-general, the commanding officer of the naval militia, the commanding officers of brigades, and any officer detailed by any one of them, shall at all times have access to all parts of all armories. On the application of one or more posts of the Grand Army of the Republic, or other veteran organization of honorably discharged union soldiers, sailors or marines of any war of the United States, or sons of such veterans, approved by the commanding officers of the brigade of the national guard in whose jurisdiction armories, the property of the state are located, and the officer in charge of such armory, subject also to the approval of the adjutant-general of the state and under such restrictions as he may prescribe, the officer in charge of any state armory designated by the adjutant-general of the state shall provide a proper and convenient meeting room or rooms in such armory where such posts or other veteran organizations may hold regular and special meetings, without the payment of any expense therefor.

This section was derived from the Military Law of 1908, § 186. It was amended to read as above by L. 1911, ch. 102, § 2; L. 1913, ch. 558, § 5. The amendment by L. 1911, ch. 102, § 2, added the words "ambulance company" in the first sentence. The amendment by L. 1913, ch. 558, § 5, made a change in the second sentence relative to the control of armories of the signal corps, and in the second paragraph added the words "the commanding officer of the naval militia."

Officer empowered to execute certificate.—An ambulance company is attached to the headquarters of the division, and the approval and certificate for the use of its quarters as a separate armory should be made by the major-general. The separate divisions of the naval militia are not attached to the headquarters of the division and the approval and certificate should be made by the commanding officer of the brigade within whose command the armory is located. Op. Atty.-Gen. (1912) 412, 413.

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Use for nonmilitary purposes.—An armory is a public building to be used for public purposes only, and an agreement authorizing the use of any part of it for any purpose other than those of the regiment itself is ultra vires and void. Veterans Seventh Regiment v. Field Officers Seventh Regiment, (1891) 60 Hun 578, 14 N. Y. S. 811, affirming 5 N. Y. S. 391.

§ 187. Armorers, assistant armorers, janitors, assistant janitors, engineers and electricians. There shall be allowed for each armory and for the headquarters of the division, the naval militia, and of each brigade, one armorer. There shall also be allowed to each regiment and each battalion of field artillery one assistant armorer, who shall be appointed by the commanding officer of the regiment or the commanding officer of a battalion not part of a regiment, upon the approval and certificate of the major-general. If an armory be heated by steam, there shall be allowed one chief engineer and also one assistant engineer if the commanding officer of the brigade to whose command the organization occupying such armory belongs or the major-general or the commanding officer of the naval militia as the case may be shall approve the employment of an assistant engineer; in an armory occupied by a regiment and lighted by electricity produced by machinery operated by the power of steam, if such steam is generated and machinery operated within such armory, there shall be allowed on like approval, an additional assistant engineer; in an armory occupied by the coast artillery, an electrician if the chief of coast artillery and the officer having charge and control of the armory shall certify that the services of an electrician are necessary; there shall also be allowed for an armory occupied by a regiment, by a battalion or squadron not part of a regiment, by a battery, by a troop, by a company of signal corps, by a field hospital, by an ambulance company or by two or more separate batteries or companies, one janitor; there shall also be allowed to each regiment and each battalion of field artillery one assistant janitor, who shall be appointed by the commanding officer of the regiment or the commanding officer of a battalion not part of a regiment, upon the approval and certificate of the major-general; and the armorer, the engineer, the electrician, and the janitor thus authorized shall be appointed by the officer having control and charge of the armory. Where a field hospital, an ambulance company, a company of signal corps, troop, battery, separate division, or the headquarters of the division, headquarters of the naval

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militia, of a brigade, of a regiment or of a battalion not part of a regiment occupies a portion of an armory or state arsenal, each shall be entitled to an armorer and such field hospital, ambulance company, company of signal corps, troop, battery, separate division or headquarters of the division or the naval militia shall also be entitled to a janitor who shall be appointed by its respective commanding officer, and such headquarters and quarters shall be considered an independent armory, upon the approval and certificate of the major-general, the commanding officer of the naval militia or commanding officer of the brigade to whose command the organization occupying such armory belongs. All persons appointed or employed pursuant to this or the succeeding section shall perform such duties as shall from time to time be prescribed by the officer appointing or employing them.

This section was derived from the Military Law of 1908, § 187, which related to "Armorers, janitors and engineers." It was amended to read as above by L. 1911, ch. 102, § 3; L. 1913, ch. 206; L. 1913, ch. 558, § 6; L. 1914, ch. 163, § 1. The amendment by L. 1911, ch. 102, § 3, added the provisions relating to ambulance companies. The amendment by L. 1913, ch. 206, added to the third sentence the words "or of a regiment of field artillery." The amendment by L. 1913, ch. 558, § 6, changed the section head to read "Armorers, janitors, engineers and electricians;" omitted the words "or of a regiment of field artillery" which were added by L. 1913, ch. 206; added provisions relating to electricians. The amendment by L. 1914, ch. 163, § 1, changed the section head to read as given in the text; added the second sentence; added the words "there shall also be allowed to each regiment and each battalion of field artillery one assistant janitor . . . upon the approval and certificate of the major-general" to the third sentence near the end.

Approval of appointments.— The appointment of an armorer under this section is not valid unless it is with the approval and certificate of the major-general or commanding officer of the brigade within whose command such armory is located. Matter of Gibbons, (1912) 75 Misc. 512, 136 N. Y. S. 267.

Civil service.— The attorney-general has ruled that "employees appointed by military officers and performing duties in local armories hold offices or positions created by the legislature in the discharge of the duty imposed on it by article XI of the Constitution, and that such employees are part of the military establishment of the state and are not within the jurisdiction or subject to the rules of the State Civil Service Commission." Op. Atty.-Gen. (1906) 365, 368. See generally, CIVIL SERVICE LAW, § 2.

§ 188. Laborers. To provide for the proper care and cleanliness of armories and arsenals and of the property therein deposited, the officer having control and charge of the armory or arsenal, may appoint laborers as follows: For armories or arsenals having ten thousand square feet or less of floor surface, one laborer; when the floor surface exceeds twenty thousand square feet, two laborers; and for each twenty thousand in excess

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of twenty thousand, an additional laborer; boiler and engine rooms, unused cellar room and rooms used for employees quarters shall not be included in computing such floor surface. In an armory occupied by coast artillery, and to each armory occupied by a battery, a separate division or divisions or an organization of the signal corps in addition to the above, one expert laborer, competent to care for artillery or signal implements, instruments and equipment. There shall also be allowed to each armory in which are stored the implements and instruments of regimental and of battalion headquarters of field artillery, one expert laborer. For all armories in addition to the above there shall be allowed one laborer to each ten horses or mules therein stabled and used for military purposes by the organization quartered therein, and in armories where more than thirty horses or mules are so stabled and used, two additional laborers. In armories of the quartermaster corps and field artillery, in addition to the foregoing, there shall be allowed one laborer for said corps and for each battery of field artillery, for the care of field artillery, harness and equipment. Before any such appointment is made, the necessity for the employment of such laborer or laborers shall be certified by the commanding officer of the division, of the naval militia or of the brigade, as the case may be, and such certificate shall be filed in the office of the disbursing officer of the county in which the armory or arsenal is situated. A certificate of the number of feet of floor surface of each armory or arsenal in which laborers are appointed shall be made by a person designated for the purpose by the armory board of the city of New York where the armory is in said city and where the armory is outside of said city by a person designated for the purpose by the armory commission for the district in which the armory is situated and such certificate when approved by the commanding officer of the division, of the naval militia or brigade, to whose command the organization quartered in such armory or arsenal belongs, shall be filed in the office of the disbursing officer of the county in which the armory or arsenal is located except as to counties wholly or partly within the city of New York, when it shall be filed with the comptroller of said city.

This section was derived from the Military Law of 1908, § 188. It was amended to read as above by L. 1910, ch. 19; L. 1911, ch. 102, § 4; L. 1913, ch. 558, § 7; L. 1914, ch. 159; L. 1914, ch. 163, § 2; L. 1915, ch. 290, § 3; L. 1916, ch. 475.

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Hours to constitute a day's work: see LABOR LAW, § 3.
Preference in employment of persons upon public works: see LABOR LAW, § 14.

§ 189. Compensation of employees in armories. The persons appointed under the provisions of the two preceding sections shall receive compensation for the time actually and necessarily employed in their duties, to be fixed by the officer appointing such persons as follows: When employed in armories or arsenals, armorers, janitors, electricians and engineers not to exceed four dollars per day. An armorer, janitor, electrician, engineer or laborer appointed by the commanding officer of an organization located in a city who under orders duly issued by such officer performs the whole or any part of his duties outside the limits of such city shall receive the compensation provided for an armorer, janitor, electrician, engineer or laborer employed in an armory, located in such city; laborers not to exceed three dollars per day. An armorer employed in an arsenal or armory having two hundred thousand or more square feet of floor surface and occupied by a regiment may in the discretion of the officer appointing, receive compensation not to exceed five dollars per day. The chief engineer in an armory having over two hundred thousand square feet of floor surface occupied by a regiment and lighted by electricity produced by machinery operated within such armory, may receive not to exceed five dollars per day. The compensation, as certified to by the officer appointing such persons, under the provisions of the two preceding sections, shall be paid semi-monthly upon the certificate of such officer, and shall in counties outside the city of New York be a charge upon the counties constituting the brigade district and within the city of New York upon the county in which such armory or arsenal is situated; and shall be levied, collected and paid in the same manner as other brigade district or county charges are levied, collected and paid. A commissioned officer in active service shall not be eligible for appointment to, and shall not hold the position of armorer, janitor, electrician, engineer or laborer in any armory or arsenal. The appointing officer shall grant to each employee a vacation of fourteen days per year with pay.

This section was derived from the Military Law of 1908, § 189. It was amended to read as above by L. 1911, ch. 102, § 5; L. 1912, ch. 242; L. 1913, ch. 558, § 8.

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Hours of labor.— Employees in state armories are not limited to eight hours of labor per day. Matter of Burns, (1904) 98 App. Div. 507, 90 N. Y. S. 254; Op. Atty.-Gen. (1909) 161, 162. See, generally, LABOR LAW, § 3.

Sunday labor.— The supervisors have no right to deduct all the Sundays on which services were rendered. If it appears from the affidavits and from the nature of the employment that services were as necessary upon Sundays as any other day of the week, they are not prohibited or condemned by any statute. People v. Ulster County, (1883) 91 N. Y. 672.

War service.— Employees in armories of the state who served in the army of the United States during the Spanish-American war were held to be entitled to pay by the state during the time they were so absent. Op. Atty.-Gen. (1899) 367.

Audit by supervisors.— The board of supervisors have no power or jurisdiction to audit or review the amount of compensation allowed and certified by the commanding officer. So, where a person was properly and legally appointed to take charge of an armory and his bill was properly certified by the commanding officer who appointed him, the amount of the bill thus certified became a charge upon the county, and the supervisors had no other duty in reference thereto except to cause the amount of the bill to be levied, collected and paid like other county charges. People v. Ulster County, (1883) 91 N. Y. 672.

§ 190. Armorers and employees for naval militia. On any vessel used as an armory of the naval militia, in accordance with section one hundred and ninety-two of this chapter, the ranking commanding officer of the organization or organizations quartered on said vessel shall have the right to appoint as many employees of the same classes described in the three preceding sections as, in his judgment, the care and safety of the vessel, its equipment, armament and stores demand, and to establish their respective duties, ratings and compensation, always provided, however, that the gross compensation of such employees shall not exceed the amount per day authorized and established by section one hundred and eighty-nine of this chapter. The duties of the aforesaid employees shall include service on boats which are under the command of the ranking officer of such naval militia organization.

This section was derived from the Military Law of 1908, § 190.

§ 191. Armories for naval militia. Armories of the naval militia shall be situated immediately on or near navigable waters of the state, in such position as best to promote the efficiency of the service. The word "armory" as used in this article, and in any part of this chapter when applied to the naval militia, shall be held to include a vessel used as an armory for the purposes of instruction, drill and defense, and a building used for any like

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purpose or as a place of deposit for naval stores, equipments or property. Organizations of the naval militia shall have the same right to make requisition on the proper public officers for the erection of armories as is granted by law to organizations of the national guard and all provisions of law as to the acquisition of armory sites, the obligation of public officers and public corporations to provide the same and the acquisition of sites, and furnishing, altering, repairing, adding to and erecting armories and the furnishing of supplies to organizations quartered therein, are hereby made applicable to organizations of the naval militia. The commanding officer of the naval militia shall at all times have access to armories provided for organizations of his command. The department, bureau, officer or authority having the charge or control of docks within the limits of a city shall upon the requisition of the commanding officer of the naval militia, when directed so to do by the armory board of the city of New York as to said city and by the armory commission as to other cities furnished without charge or expense to the state and naval militia suitable and adequate dock, berthing and mooring facilities for vessels and boats used by any organization of the naval militia located in said city and free access thereto at all times for the members of such militia. The armory board of the city of New York and the armory commission as to other cities are hereby authorized and empowered to furnish dock facilities for the use of the naval militia as hereinbefore stated and to determine the suitability and adequateness of the facilities of the dock, berthing and mooring facilities. The word "dock" where used in this section shall be construed to include wharves, piers, bulkheads, slips, basins, docks and water front.

This section was derived from the Military Law of 1908, § 191.

§ 192. Use of armories. Armories shall only be used as follows:

(a) By troops and cadet corps of organizations of the active militia.

(b) By posts of the Grand Army of the Republic or other veteran organizations of honorably discharged union soldiers, sailors or marines of any war of the United States or of sons of such veterans as provided in section one hundred and eighty-six of this chapter.

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(c) For such other purposes not interfering with its use by the troops quartered therein as may be approved by the officer having charge and control of the armory and his division or brigade commander as the case may be, provided that when such use is not by an organization of the national guard or naval militia there shall first be executed by the person, association, corporation or copartnership applying to use the same and by a surety company a bond to the people of the state conditioned to indemnify and save harmless severally the state and the city or county in which the armory is situated and the troops therein quartered and the civil associations formed by the same under this chapter from any loss, damage or expense to the armory or any property of the said state, county, city or troops or civil associations therein accruing from or incident to such use and for the payment of the expenses of heating, lighting and janitor and other services connected with such use. This bond shall be approved as to form and sufficiency by the division or brigade commander who approves the use of the armory and an action for its breach may be brought in the name of the people of the state by a judge-advocate and all moneys recovered therein shall be paid to the treasurer of the state, county, city or civil association as the case requires.

(d) An armory shall not be used for political or religious purposes, except that an armory may be used for the purpose of holding the national convention of a political party, the approval of the officers mentioned in the preceding subdivision of this section being first duly obtained and the bond provided for by said subdivision being first duly executed.

(e) All moneys paid for the use of an armory shall form part of the military fund of the troops quartered therein and shall be paid by the person or officer receiving the same to the chamberlain of the city of New York if the armory be situated therein, otherwise to the treasurer of the county in which the same is situated.

This section was derived from the Military Law of 1908, § 192. It was amended to read as above by L. 1909, ch. 240, § 56; L. 1911, ch. 462. The amendment by L. 1909, ch. 240, § 56, affected subdivision (b) and corrected an error in the reference to section 186. The amendment by L. 1911, ch. 462, affected subdivision (d) and added thereto the words following the first comma.

Quartering visiting troops.— Under the former provisions of the Military Code the quartering of visiting troops in an armory with the approval of the adjutant-general was a use of such armory for "a military purpose." In

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such a case the consent of the brigadier-general or officer in command of the armory, or the governor, was not required, and no bond was required to be given. Op. Atty.-Gen. (1899) 370.

§ 193. Annual estimate for maintenance. The office in charge and control of an armory outside of the city of New York shall, on or before the first day of September in each year, prepare and submit for approval to the commanding officer of the brigade to which his organization is attached, otherwise to the major-general, and, in case of an organization of the naval militia, to the commanding officer of the naval militia, an itemized estimate in quadruplicate, of the necessary expenditures to be made for labor and the utensils, materials, means and supplies necessary and required for the next fiscal year for the cleaning, care, proper keeping, maintenance and preservation of the armory or portion thereof used or occupied by the organization therein quartered, the repairing of the lavatories, bath, wash and water closets, and the apparatus and fixtures for heating, lighting and ventilating said armory, and the heating, lighting, water supply and telephone service in and for said armory and the utensils, means, materials and supplies necessary and required for the care, proper keeping, maintenance, repair and preservation of the arms, uniforms, harness, wagons, equipments, books, papers, records and furniture used and kept by such organization in said armory and the camp stools, chairs, desks, cases, and the tools, appliances, facilities and furnishings necessary for and required in such armory [1]and the expense of repairing, renewing, replacing or maintaining pavement of streets or gutters, curbing, flagging of sidewalks, fences, sewers and water pipes and their connections in, on or connected with the site upon which an armory is located. The expenses above enumerated in the amount approved as herein provided[2] shall be deemed the cost of maintenance within the provisions of this chapter. [3]An item of expense estimated and approved may be transferred to be used in payment of other items of expense above specified upon the authority or direction of the officer approving such estimate. Such estimate when and as approved shall be filed by the approving officer[4] as follows: One

[1] Remainder of sentence new.
[2] Words "in the amount approved as herein provided," new.
[3] Following sentence new.
[4] Words "Such estimate when and as approved shall be filed by the approving officer," substituted for "Upon the approval of such estimate, it shall be filed."

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copy [1] with the officer approving the same; one with the armory commission; one with the treasurer of the county in which the armory is located[2] and one at the armory. The amounts included in such estimate and appropriated as by this chapter required shall be expended upon the requisition of the officer in charge and control of the armory as follows: Expenditures not exceeding one hundred dollars, upon the approval of the county treasurer [3]of the county having custody of the funds to be disbursed thereunder; expenditures exceeding one hundred dollars and not exceeding five hundred dollars, upon the requisition of the officer in charge and control of said armory, accompanied with written proposals for furnishing the articles, materials or property or performing the work required from at least two responsible parties, upon receiving which said treasurer [3]shall purchase such articles, materials or property from, or cause such work to be performed by, the lowest responsible bidder; expenditures exceeding five hundred dollars, upon the requisition of the officer in charge and control of said armory as follows: Said county treasurer [3]shall publicly advertise for ten days for sealed proposals for furnishing the articles, materials or property or performing the work required; such proposals shall be publicly opened by the county treasurer [3]at the place, day and hour designated in such advertisement and said county treasurer [3]shall contract with the lowest responsible bidder to furnish such articles, materials or property or to perform the work required. No payment shall be made from the moneys aforesaid except upon the approval in writing of the officer making the requisition. Copies of all proposals and contracts made under the authority hereby conferred shall be filed in the office of the county treasurer.[3] The county treasurer[3] is authorized and directed, whenever in his opinion it shall be to the interest of the brigade district, a require a party who shall agree or contract to furnish any articles, materials or property or to perform any work to give a bond to the people of the state of New York in such sum and with such surety as he shall direct, conditioned for the faithful performance of such agreement or contract. In case of default,

1 Words "with the adjutant-general of the state; one," omitted.

2 Words "one with the treasurer of the county in which the armory is located," new.

3 Words "or other fiscal officer," omitted.

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such bond shall be prosecuted by the attorney-general and all moneys recovered shall be paid to the said county treasurer, [1]who shall place said moneys to the credit of the corporation, organization, person or fund damaged or injured. The county treasurer of such county shall, on the first day of September in each year, file with the armory commission a report in detail showing the amounts paid or contracted to be paid during the preceding fiscal year for or on account of each armory located in said county and specifying the balance remaining in his hands of the moneys appropriated for said fiscal year, including the accumulated interest thereon which will not be required to meet outstanding obligations contracted during said fiscal year, [1]which balance shall become a portion of the maintenance fund of such armory for the fiscal year beginning July first following. The first report required hereunder shall be made on the first day of September, nineteen hundred and fifteen, and shall include all amounts received, paid out or contracted for from the first day of January, nineteen hundred and fourteen, to and including the thirtieth day of June, nineteen hundred and fifteen, and shall show the balance remaining in his hands of the moneys appropriated for said period including the accumulated interest thereon which will not be required to meet outstanding obligations contracted during said period.

Section 193 of the Military Law of 1908 was "Definition of armory," and as such was consolidated in the Military Law of 1909. The section was amended by L. 1913, ch. 558, § 9, and the section head changed to "Annual estimate for maintenance." The subject matter of the section was new. It was amended to read as above by L. 1915, ch. 290, § 4. The amendments are shown in the footnotes.

Cited.— In Op. Atty.-Gen., dated Feb. 7, 1916, this section was cited on the question of raising funds for the temporary rental of an armory. See 6 St. Dept. Rep. 484. And see infra, § 198 note.

§ 194. Emergency expenditures. In case of emergency the treasurer of a county wherein an armory is located shall, upon the requisition of the officer having charge or control of such armory, approved by the armory commission, make expenditures not exceeding twenty-five hundred dollars out of any funds in his hands. The amounts so paid out, with interest, shall be included in the next annual budget of the brigade district and repaid to the said county treasurer by the armory commission. This section

[1] Remainder of sentence new.

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shall not apply to or affect any portion of the several counties lying within the boundaries of the city of New York.

Section 194 of the Military Law related to "Headquarters for regiments and battalions composed of separate troops or companies," and as such it was consolidated in the Military Law as enacted in 1909. It was amended to read as above by L. 1913, ch. 558, § 9.

§ 195. Inventory of property and accountability therefor. Every officer in charge and control of an armory on the first day of September in each year in the manner and form prescribed by the armory commission or armory board shall make and file an inventory and account[1] of all property supplied by a city, county or brigade district [2]in his custody on the thirty-first day of August, [3]and of all property received, expended, lost or destroyed during the preceding year. In the city of New York such inventory shall be filed with the armory board. For armories[4] outside the city of New York it shall be filed with the armory commission. Access to armories for the purpose of verifying the inventories and returns required to be filed by this section may be had at all proper times by duly authorized representatives of the armory commission or the armory board.

Every officer in charge and control of an armory shall be personally responsible for the care and maintenance of such armory and for all city, county and bridage district property contained therein; and no such officer shall be relieved of such property or responsibility, except such responsible officer make application for such relief and furnish to the armory commission or armory board satisfactory proof of the proper expenditure of such property or the unavoidable loss or destruction thereof, and the said armory commission or armory board may thereupon relieve said officer from said responsibility.

This section was derived from the Military Law of 1908, § 195, "Inventory of property." It was amended to read as above by L. 1913, ch. 558, § 9; L. 1915, ch. 290, § 4. The amendment by L. 1913, ch. 558, § 9, changed the section head to read as given in the text; changed the date for making and filing the inventory; substituted the armory board in place of the board of supervisions, and added provisions relating to personal responsibility of officers in charge of property. The amendment by L. 1915, ch. 290, § 4, are shown in the footnotes.

[1] Word "account" in place of "return."
[2] Word "and" omitted.
[3] Remainder of sentence substituted in place of words "in each year."
[4] Formerly "In counties."

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§ 196. Disposal of useless property. Whenever property furnished to an armory[1] by a county, a[2] brigade district or by the city of New York shall become obsolete, useless or superfluous, the armory commission or armory board, as the case may be, may cause the same to be sold at public or private sale for the best price obtainable. The moneys derived from the sale thereof in the case of a county or brigade district[3] shall be paid to the county treasurer of the county in which the armory is located from which the property sold was taken, to the credit of the maintenance fund of such armory, to be accounted for by him as provided by section one hundred and ninety-three of this chapter,[4] and in case of the city of New York it[5] shall be paid to the chamberlain of such city, to the credit of the armory board.

New. Added by L. 1913, ch. 558, § 10, and amended to read as above by L. 1915, ch. 290, § 5. The amendments are shown in the footnotes.

§ 197. First estimate for maintenance to cover expenses for eighteen months. The estimates for maintenance herein provided to be made by section one hundred and ninety-three, in the year nineteen hundred and thirteen, shall be made for and include the eighteen months to commence on the first day of January, nineteen hundred and fourteen, and to end of the thirtieth day of June, nineteen hundred and fifteen, and shall be submitted for approval as therein required and when approved shall be filed with the armory commissions as required by said section and the certificate of the officer approving the same required by section one hundred and seventy-eight shall also include the maintenance charges for said eighteen months. The estimates to be made under section one hundred and seventy-eight by the armory commissions in the year nineteen hundred and thirteen for constructing, altering, repairing, enlarging, renting and equipping the armories of each district shall be made for a like period. The

1 Words "to an armory" new.

2 Words "county, a" new.

3 Words "a county or brigade district" in place of words "brigade districts."

4 Words "to the county treasurer . . . section one hundred and ninety-three of this chapter" in place of the words "into the state treasury to the credit of the brigade district which furnished said property."

5 Word "it" new.

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amount so certified to the commissions and the amount so determined by them shall be apportioned by the armory commissions as required by section one hundred and seventy-eight upon the several counties of the brigade districts as therein provided and shall as therein provided be certified by said armory commissions to the comptroller. On or before the first day of November, nineteen hundred and thirteen, the comptroller shall state the amount thereof to each county as therein provided and such amount so certified by said comptroller to the several counties shall be a portion of the county charges of each of such counties and shall be levied, collected and paid as other county charges are levied, collected and paid. Such amounts shall be paid by the several county treasurers into the treasury of this state on or before the fifteenth day of May, nineteen hundred and fourteen. On or before the first day of June, nineteen hundred and fourteen, the comptroller shall draw his warrants on the state treasury in favor of the several county treasurers of the brigade districts for the amount required for the maintenance of each armory of the brigade districts as certified to him by the armory commissions and the amounts required shall be transmitted to the several county treasurers designated by the armory commissions to receive the same, which amounts shall be expended for the maintenance of the several armories as provided for in this chapter for the eighteen months hereinabove mentioned. The amount raised for the construction, alteration, repair, enlargement, renting and equipping armories within each district shall be paid upon the warrant of the comptroller, upon the certificate of the armory commission for the purposes hereinabove specified for the said eighteen months. The several county treasurers to whom the same are payable are hereby authorized and required to borrow, on the faith and credit of their respective counties, in anticipation of the receipt of the several sums so payable to them, such sums as may be necessary to meet the maintenance charges of the armories within their respective counties, not exceeding one-third of the amount required for the maintenance of said armories for said eighteen months, and to issue certificates of indebtedness therefor, payable on or before the first day of July, nineteen hundred and fourteen, with interest at a rate not to exceed six per centum per annum. On receiving the amounts for the maintenance of armories within their respective counties for said

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eighteen months said county treasurers are authorized and directed forthwith to pay therefrom the sums so borrowed by them with interest.

New. Added by L. 1913, ch. 558, § 10.

Necessity for appropriation.— It is contrary to the state constitution for the comptroller to draw his warrant on requisition of the state armory commissioners upon the state treasurer for funds collected from various counties of the state for maintenance of armories, without an appropriation by the legislature. Op. Atty.-Gen. (1913) 703.

§ 198. Temporary provision for a new armory or additional employees. In case additional armories are established or rented [1] or additional employees employed, pursuant to the provisions of this chapter, for the expense of which no moneys have been collected for the fiscal year in which said armory was established or said employees employed, the officer in charge and control of said armory shall prepare and submit an estimate of cost of maintenance or of such additional labor as provided in section one hundred and ninety-three of this chapter, for the remainder of said fiscal year, and the armory commission shall, if necessary, determine the amount required for the repair, enlargement, renting and equipping such armory[2] as directed in section one hundred and seventy-eight of this chapter. The county treasurer of the county in the bounds of which such armory is established or employees employed is hereby authorized and required to borrow on the faith and credit of his county the amount specified in such estimates and the amount so determined as aforesaid, and to issue certificates of indebtedness therefor, payable on or before the first day of July following the next first day of September, with interest at a rate not exceeding six per centum per annum.[3] The amount so borrowed shall be expended by the county treasurer as follows: The sums for maintenance or labor upon the requisition of the officer in charge and control of the armory as provided by section one hundred and ninety-three of this chapter; the sums for the repair, enlargement, renting and equipping such armory upon the order of the armory commission of the brigade district in which such armory is located. The amount borrowed by said county treasurer with interest thereon, shall be included by the

[1] Words "or rented" new.

[2] Words "for the repair, enlargement, renting and equipping such armory," new.

[3] Following sentence new.

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armory commission in its next certificate to the comptroller of the state, and shall be paid to the county treasurer as provided in section one hundred and seventy-eight of this chapter.

New. Added by L. 1914, ch. 162, and amended to read as above by L. 1916, ch. 472, § 2. The amendments are shown in the footnotes.

Mode of raising and disbursing funds.— Where money is raised under this section to make temporary provision for the rental of a new armory, it should be borrowed by the county treasurer, paid to the state treasurer, appropriated by the legislature, and disbursed by the state treasurer on the warrant of the comptroller upon the certificate of the armory commission. Op. Atty.-Gen. (1916), reported in 6 St. Dept. Rep. 484.

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ARTICLE 10

Pay and Allowances

Section 210. Pay.
211. Pay of troops when used in civil disorders.
212. Pay of officers serving on boards, commissions and courts.
213. Payment of expenses of delinquency courts for enlisted men.
214. Pay of officers and enlisted men assigned to special duty.
215. Allowances for officers.
216. Allowances for military organizations; military fund.
217. Audit and expenditure of funds.
218. Allowances for headquarters.
219. Allowance for salaries of the major-general and officers of division, staff and clerks.
219-a. Retired officers; compensation.
220. Pensions.
221. Proof required; striking from roll.
222. Pension examiners and examining boards.
223. Pay and care when injured or disabled in service.
224. Appeals and rehearing.
225. Reports of county treasurers; bonds for military funds; funds of disbanded organizations.
226. *Interest on military funds in the hands of the chamberlain or the several county treasurers of the state.

§ 210. Pay. Each officer and enlisted man ordered for duty by the governor or under his authority by the major-general or the commanding officer of the naval militia shall receive the pay herein specified for every day actually on duty except when so ordered for inspection, muster, small arms practice, parade or review or drill service not exceeding [illegible] days; a private

*So in original. The section head reads "Interest on military funds in the hands of the chamberlain of the city of New York or the several county treasurers of the state."

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or a second-class private, a musician or a trumpeter, one dollar and twenty-five cents; a first-class private or wagoner, one dollar and thirty-five cents; a corporal, an artificer, a farrier, a blacksmith, a saddler, a fireman of coast artillery, one dollar and forty-cents; a color sergeant, a sergeant, a cook, a mechanic, a stable sergeant, an electrician sergeant second class, master gunner, one dollar and sixty cents; a first sergeant, a first class sergeant, a drum major, a chief or principal musician, an ordnance sergeant, a post or regimental commissary sergeant, a post, regimental, battalion or company quartermaster sergeant, a regimental or battalion or squadron sergeant major, sergeant major senior or junior grade, coast artillery, a sergeant of signal corps, an electrician sergeant first class, an engineer coast artillery, a chief trumpeter, two dollars; a first class sergeant signal corps, a master signal electrician, a master electrician, a chief mechanic, two dollars and twenty-five cents. Enlisted men of the quartermaster corps shall receive the same pay as enlisted men of corresponding grades in the signal corps. Classified and rated enlisted men shall receive such extra daily allowance as may be fixed by the governor. A non-commissioned officer performing the duties of a grade higher than his own shall receive the pay of such higher grade; a private acting as a non-commissioned officer shall receive the pay of the grade in which he is acting; each enlisted man who has served a full term of enlistment shall be entitled to additional pay at the rate of twenty-five cents per day during the second five years of his service and a further addition of twenty-five cents per day for each succeeding five years of service; men of the naval militia shall be paid according to their assimilated grade with those of the land forces herein set forth. All commissioned officers shall be entitled to and shall receive the same pay and allowances as commissioned officers of the army or navy of the United States of equal grade and term of service. A veterinarian shall receive the pay and allowances of a second lieutenant of cavalry. Each officer and enlisted man mounted and equipped shall be paid a reasonable compensation per day for each horse actually used by him.

This section was derived from the Military Law of 1908, § 210. It was amended to read as above by L. 1909, ch. 308; L. 1912, ch. 278; L. 1915, ch. 313. The amendment by L. 1909, ch. 308, added the words "small arms practice" following the word "muster" near the beginning of the first sentence, and changed the words "a post" to "an" following the word "musician"

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near the middle of the first sentence. The amendment by L. 1912, ch. 278, added the third sentence, "classified and rated enlisted men . . . ." The amendment by L. 1915, ch. 313, added the second sentence, "enlisted men of the quartermaster corps . . . ."

Exemption of military pay from execution: see Code Civ. Pro., § 1393.

Federal service.— This section was not intended to cover service for the federal government, but only state service under the orders of the governor, and militiamen are not entitled to state pay while in the service of the United States. Op. Atty.-Gen. (1916), reported in 9 St. Dept. Rep. 409.

Cited.— This section was cited in Matter of Welch, (1913) 81 Misc. 268, 142 N. Y. S. 27, affirmed 157 App. Div. 943, 142 N. Y. S. 1140, affirmed (1913) 209 N. Y. 304, 103 N. E. 140; Op. Atty.-Gen. (1908) 298.

§ 211. Pay of troops when used in civil disorders. All officers and enlisted men while on duty, or assembled therefor, by order of the governor, upon the request of either the sheriff of a county or mayor of a city, in aid of the civil authorities, in case of riot, tumult, breach of the peace or resistance to process of this state, shall receive the pay set forth in section two hundred and ten of this chapter; and such compensation and the necessary expenses incurred in quartering, caring for, warning for duty and transporting and subsisting the troops, as well as the expense incurred for pay, care, and subsistence of officers and enlisted men temporarily disabled in the line of duty, while on such duty, as set forth in section two hundred and twenty-three of this chapter, shall be paid by the county where such service is rendered. The county treasurer of such county shall, upon presentation to him of vouchers and pay-rolls for such expenses and compensation, certified by the commanding officers of the organizations or corps on duty in aid of civil authority in such county or counties, and approved by the major-general, if he be present in command where the duty is performed, or by the commanding officer of the brigade or of the naval militia to which the organizations or corps were attached, forthwith execute in behalf of and in the name of such county, a certificate or certificates of indebtedness for the money required to pay such vouchers and payrolls; such certificates shall bear interest at the rate of not to exceed six per centum per annum, and shall be made payable on the first day of February following the expiration of two months from their issue, and the amount thereof shall be raised in the next tax budget of said county succeeding their issue, and applied to the payment of such certificates. Said county treasurer shall sell such certificates at public or private sale, and apply the proceeds

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thereof to the payment of such expenses and compensation. In the city of New York the duties hereby imposed upon a county treasurer shall be performed by the comptroller of said city, who shall raise the money necessary to comply with the provisions of this section by the issue and sale of revenue bonds of said city; the sum necessary to pay said bonds shall be included by the board of aldermen and board of estimate and apportionment of said city in its final estimates for expenses of said city for the year succeeding that in which said bonds were issued. Any county treasurer or public officer, who shall neglect or refuse to perform any of the duties required by this section, shall be personally charged with the costs and all necessary disbursements of any action or proceeding brought to compel such performance, together with a reasonable additional allowance to the plaintiff or relator in such action or proceeding, to be fixed by the court.

This section was derived from the Military Law of 1908, § 211. It was amended to read as above by L. 1916, ch. 355, § 2. Before the amendment the first sentence read: "All officers and enlisted men while on duty, or assembled therefor, pursuant to the orders of a judge of the supreme court, sheriff of a county or mayor of a city, or any other civil officer authorized by law to make such a demand on the military or naval forces of the state, in case of riot, tumult, breach of the peace, resistance to process, or whenever called upon in aid of civil authorities, shall receive," etc.

Validity of statute requiring carrier to transport militia free or at reduced rate: see Ann. Case. 1913E 498, note; 41 L. R. A. (N. S.) 524 note.

Expenses as county charge.— When a justice of the Supreme Court had the power under section 115, as it read prior to the amendment of 1916, to issue a call for military aid and the troops were in active service in pursuance to the order until the same justice granted an order terminating the order for troops, the expenses were payable by the county in which such service was rendered; and mandamus lay to the county treasurer to provide for payment of troops when ordered out under such a call. Matter of Welch, (1913) 81 Misc. 268, 142 N. Y. S. 27, affirmed 157 App. Div. 943, 142 N. Y. S. 1140, affirmed (1913) 209 N. Y. 304, 103 N. E. 140.

Cited.— This section was cited in Op. Atty.-Gen. (1908) 298. In Op. Atty.-Gen. (1916), reported in 9 St. Dept. Rep. 409, the section was cited on the question as to whether militiamen may draw state pay while in the service of the United States. See supra, § 210 note.

§ 212. Pay of officers serving on boards, commissions and courts. Members of [1]boards and commissions created by this chapter, and all officers, except officers on the reserve list[2] detailed to serve on any board or commission ordered by the governor, or under his authority by the major general, or the commanding

[1] Words "the militia council and members of," omitted.
[2] Words "except officers on the reserve list," new.

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officer of the naval militia, or on any court of inquiry, court-martial or delinquency court, ordered by proper authority in pursuance of any provision of this chapter, shall be paid for each day actually employed in such [1]board, commission, or court, or engaged in the business thereof, or in traveling to and from the same. [2]Detailed members of the militia council shall not receive pay for service on such council, but shall receive their actual and necessary expenses for travel, subsistence and quarters in attending meetings of the council. Except for members [3]of boards and commissions created by this chapter, the sum in no case shall exceed ten days' pay and actual traveling expenses and subsistence, unless, upon application of the judge-advocate of a court-martial or the presiding officer of a delinquency court, or the presiding officer of the board, the officer appointing the court or board has authorized such court or board to sit for a longer period, or in case of such delinquency court, the governor or the officer ordering such court, has authorized such court to sit for a longer period than ten days. An officer detailed to serve on a delinquency court for the trial of enlisted men shall be paid for each day actually employed therein, engaged in the business thereof, or in traveling to and from the same, and traveling expenses and subsistence when such court shall be held at a place other than the city or town of his residence. An officer to whom a warrant for the collection of fines, dues or penalties under the sentence of a military court is delivered shall be paid by retaining to his own use, twenty-five per centum of the fines, dues or penalties collected by him. Said percentage shall be taxed by the officer issuing the warrant and indorsed thereon and added to the amount collectible to satisfy the sentence of the court. In addition to this percentage a marshal of a military court shall be paid two dollars for each day actually employed in the execution of the duties required of him and mileage or actual necessary traveling expenses while engaged in executing any process or mandate of a military court. Mileage shall be computed at the rate of ten cents for each mile necessarily traveled going and returning to serve any process or mandate of a military court, the distance to

[1] Word "council" omitted.
[2] Following sentence new.
[3] Words "of the militia council and members," omitted.

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be computed, from the place where it is served to the place where it is returnable.

This section was derived from the Military Law of 1908, § 212. It was amended to read as above by L. 1913, ch. 68; L. 1915, ch. 453, § 2. The amendment by L. 1913, ch. 68, added the words "members of boards and commissions created by this chapter" at the beginning of the section and also at the beginning of the third sentence; added the word "commission" near the end of the first sentence. The amendments by L. 1915, ch. 453, § 2, are shown in the footnotes.

§ 213. Payment of expenses of delinquency courts for enlisted men. The compensation and necessary expenses of the officer holding a delinquency court for enlisted men, and of the clerk and marshal thereof, and the actual expenses of the court for the time engaged in the trial of enlisted delinquents, and the necessary business connected therewith, shall be paid by the command to whose military fund fines collected from such delinquents are paid, from the military fund of such command, in the same manner as other accounts are paid from such fund.

This section was derived from the Military Law of 1908, § 213.

§ 214. Pay of officers and enlisted men assigned to special duty. Any commissioned officer assigned to special duty by the governor or under his authority, shall be paid for the time actually employed, and his necessary traveling expenses and subsistence, when such payment is authorized by the governor. Judge-advocates shall be paid for services in bringing any suits provided for in this chapter, and for services in actions or proceedings by habeas corpus, certiorari or otherwise, such compensation as shall be approved by the governor. All staff officers shall be paid for special service ordered by competent authority, with the approval of the governor. Enlisted men, on duty under the orders of the governor, but not at the time serving with troops, shall receive pay, their actual traveling expenses and subsistence.

This section was derived from the Military Law of 1908, § 214.

§ 215. Allowances for officers. To assist in uniforming and equipping themselves, commissioned officers who have been in active service as such and who have performed eighty per centum of all ordered duty during a calendar year of twelve months, beginning with the first day of January, shall receive annually if mounted fifty dollars and if dismounted thirty dollars, and

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officers who have been in active service as such during a period less than a calendar year and who have performed eighty per centum of all ordered duty during such period of service shall receive such proportion of the allowance for the year as the period of service performed by them bears to a calendar year.

This section was derived from the Military Law of 1908, § 215. It was amended to read as above by L. 1909, ch. 309. The amendment added the provisions which permit an allowance for officers who have served for less than a calendar year.

§ 216. Allowances for military organizations; military fund. On the certificate of the adjutant general of the state the comptroller shall annually draw his warrant in favor of each county treasurer specified in such certificates, for the organizations of the active militia mentioned therein as follows: Fifteen hundred dollars for each battalion of the corps of engineers;[1] seven hundred and fifty dollars for each regiment of infantry and field artillery; five hundred dollars for the headquarters of a battalion of signal corps;[2] twenty-five hundred dollars for each battery; fifteen hundred dollars for each troop, and one thousand dollars for each company of signal corps field hospital and ambulance company, to be expended for mounted drills and parades, and for the feed and shoeing of horses in the service of the state; two hundred and fifty dollars for each company of signal corps, field hospital, ambulance company, separate troop, battery, company or division; and for each regiment, battalion and squadron not part of a regiment, company or signal corps, field hospital, ambulance company, separate troop, battery, company and division, for the purpose of defraying other necessary military expense, a sum equal to one dollar and sixty cents for each of its enlisted men present for duty at each of five of the compulsory drills or parades required in this chapter, which sums, together with the fines and penalties collected from delinquent enlisted men, shall constitute the military fund of such regiment, battalion or squadron not part of a regiment, company of signal corps, field hospital, ambulance company, separate troop, battery, company or division. [3]When the amount of one dollar and sixty

[1] Words "Fifteen hundred dollars for each battalion of the corps of engineers," new.

[2] Words "five hundred dollars for the headquarters of a battalion of signal corps," new.

[3] Following sentence new.

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cents is allowed for enlisted men serving in a headquarters company, a machine gun company or a supply company of a regiment, such amount together with the fines and penalties collected from such enlisted men shall form part of and be administered as part of the military fund of the regiment of which such company is a part. For the purposes of allowances granted in this section the corps of engineers and officers and enlisted men of the coast artillery corps serving in an artillery district shall each be considered a regiment and enlisted men of any corps or department attached to or assigned to duty with any organization, corps or artillery district shall be considered as enlisted men of such organization, corps or artillery district. Separate troops, batteries, companies and divisions, if organized into squadrons, battalions or regiments, shall thereby not be deprived of the allowances granted each in this section. Muster and inspection when ordered shall be counted as one of the five compulsory parades required to obtain the annual allowance.

This section was derived from the Military Law of 1908, § 216. It was amended to read as above by L. 1911, ch. 101, § 1; L. 1912, ch. 56, § 1; L. 1913, ch. 568, § 1; L. 1915, ch. 444. The amendment by L. 1911, ch. 101, § 1, added at the beginning of the next to last sentence the words "Squadrons not a part of a regiment if organized into a regiment." The amendment by L. 1912, ch. 56, § 1, added provisions for an allowance to headquarters of field artillery battalions; added ambulance companies to the organizations receiving allowances of one thousand dollars and the two hundred dollars additional allowance; eliminated the word "separate" which preceded the words "battery" and "company." The amendment by L. 1913, ch. 568, § 1, substituted "regiment of infantry and field artillery" in place of "headquarters of field artillery battalions," as added by the amendment by L. 1912, ch. 56, § 1; omitted the words "Squadrons not a part of a regiment if organized into a regiment" which were added by the amendment of L. 1911, ch. 101, § 1. The amendments by L. 1915, ch. 444, are shown in the footnotes.

§ 217. Audit and expenditure of funds. The funds allowed under the preceding section shall be expended for the benefit of the command to which the same are allowed upon the approval and audit of an auditing board constituted as follows:

a. In regiments and battalions and squadrons[1] the three ranking line officers.

b. In the corps of engineers the three ranking officers of the corps serving with the engineer troops.

c. In the coast artillery corps the three ranking officers of the corps in each artillery district.

[1] Words "not parts of regiments," omitted.

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d. In batteries, separate troops and separate companies the line officers of the organization.

e. In companies of signal corps the officers of the corps on duty with the company.

f. In field hospitals and ambulance companies[1] the officers of the medical corps[2] on duty therewith.

g. In the naval militia the commanding officer and the two line officers highest in rank in the organization.

The auditing board shall draw an order on the proper county treasurer for the payment of each just claim allowed by it, but such order shall not be paid by the county treasurer until after the vouchers in support of such claim shall have been approved by the major-general for organizations or corps attached to the division, by the commanding officer of a brigade for an organization attached to such brigade, by the commanding officer of the naval militia for organizations of the naval militia as the case may be and by the adjutant-general of the state. When by reason of a vacancy or vacancies in office or of relief from duty or absence on leave of an officer or officers of an organization a quorum of qualified officers cannot be obtained for its auditing board as constituted by this section, officers detailed to discharge the duties of the vacant offices or relieved or absent officers may act as members of the auditing board to the extent needed to form a quorum thereof, with the same authority as duly qualified members of the organization would have if present.

This section was derived from the Military Law of 1908, § 217. It was amended to read as above by L. 1909, ch. 307; L. 1912, ch. 56, § 2. The amendment by L. 1909, ch. 307, added the last sentence. The amendments by L. 1912, ch. 56, § 2, are shown in the footnotes.

§ 218. Allowances for headquarters. On the certificate of the adjutant-general of the state, the comptroller shall, annually, draw his warrant upon the treasurer for the following sums, namely: twelve hundred dollars for the headquarters of the naval militia, for the chief of coast artillery, and for each brigade headquarters; fifteen hundred dollars for each regimental headquarters; five hundred dollars for each battalion and squadron headquarters; one hundred dollars additional to naval battalions for each signal division and two hundred and fifty dollars for

1 Words "and ambulance companies," new.
2 Word "corps" substituted for word "department."

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each engineer division contained therein. For brigade headquarters in brigades covering a territory of more than ten counties, and in counties containing over two million inhabitants,[1] five hundred dollars, and in brigades whose organizations are located in fifteen or more counties, eight hundred dollars additional shall be allowed. For the headquarters of each regiment whose organizations are located in more than four counties, an additional one hundred dollars shall be allowed for each county in excess of four, in which a company organization of such regiment is stationed. For the headquarters of each separate battalion whose organizations are located in more than two counties, an additional one hundred dollars shall be allowed for each county in excess of two, in which a company organization of such battalion is stationed. For the corps of engineers fifteen hundred dollars, for each artillery district containing eight or more companies fifteen hundred dollars, for each artillery district containing less than eight and more than four companies one thousand dollars, for each artillery district containing four companies five hundred dollars, the funds thus allowed shall only be expended by the respective commanding officers, the colonel of the corps of engineers and the ranking officer commanding the artillery district to which the fund is allowed on the approval of the adjutant-general of the state. Squadrons not part of a regiment if organized into a regiment shall thereby not be deprived of the allowances granted in this section.

This section was derived from the Military Law of 1908, § 218. It was amended by L. 1911, ch. 101, § 2; L. 1912, ch. 56, § 3; L. 1913, ch. 207. The amendment by L. 1911, ch. 101, § 2, added the final sentence to the section. The amendment by L. 1912, ch. 56, § 3, added to the allowances contained in the first sentence the allowance "for the chief of coast artillery," and substituted for the words "for each naval battalion provided it contains a special division" at the end of the first sentence the words "to naval battalions . . . contained therein." The amendments by L. 1913, ch. 207, are given in the footnote.

Printing.— It seems that printing required at the various headquarters, and paid for by the treasurer on a warrant based on the certificate of the adjutant-general, comes under the head of state printing and must be done by the state printer. Op. Atty.-Gen. (1900) 170.

§ 219. Allowance for salaries of the major-general and [2]officers of division, staff and clerks. [3] The major-general shall receive an

[1] Words "and in counties containing over two million inhabitants," new.

[2] Words "the major-general and," new.

[3] Following sentence formerly read: "The major-general shall serve without salary and receive pay only when on duty and under the same conditions as permitted by this chapter to other officers of the line."

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annual salary equal in amount to the pay of a major-general in the army of the United States. There shall be allowed annually fifteen thousand dollars or so much thereof as may be necessary for salaries of the following officers detailed for duty on the staff of the division: two adjutants-general; two inspectors-general; two officers of the ordnance department. The amount thus allowed shall be expended as the major-general may direct. The necessary traveling expenses and subsistence of the major-general and the officers of the division staff when traveling on duty and under orders as well as the office expenses including printing, stationery, postage, expressage and clerical services shall also be allowed.

This section was derived from the Military Law of 1908, § 219, "Allowance for salaries of officers of division, staff and clerks." It was amended to read as above by L. 1913, ch. 374. The amendments are shown in the footnotes.

Cited.— This section was cited in Matter of Kirby, (1912) 76 Misc. 313, 134 N. Y. S. 905.

§ 219-a. Retired officers; compensation. An officer of the national guard or naval militia who has been a commissioned officer thereof in active service for at least twenty-five years, and who has during fifteen consecutive years of such active service immediately preceding his retirement received an annual compensation from the state for performing military or naval duty and who has been dependent on such compensation for his support shall receive annually from the date of his retirement on reaching the age of sixty-four years, or upon his own application, or for physical disability and during the time he remains on the retired list seventy-five per centum of the annual compensation paid to him, as aforesaid, at the date of his retirement.

New. Added by L. 1916, ch. 609.

§ 220. Pensions. Every member of the militia who shall be wounded or disabled while in the service of the state, in cases of riot, tumult, breach of the peace, resistance to process, invasion, insurrection, or imminent danger thereof, or whenever called upon in aid of the civil authorities, shall be taken care of and provided for at the expense of the state, and every such member who shall be wounded or disabled or has been so disabled in the performance of any actual service of this state within ten years

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preceding the application for a pension under this chapter, in case of riots, tumults, breach of the peace, resistance to process, invasion, insurrection or imminent danger thereof, or whenever called upon in aid of the civil authorities, or while engaged in any lawfully ordered parade, drill, encampment or inspection, shall, upon proof of the fact, as hereinafter provided, be placed on the roll of invalid pensioners of the state, and shall receive, out of any moneys in the treasury of the state, not otherwise appropriated, upon the audit of the adjutant-general of the state and approval of the governor, the like pension or reward that persons under similar circumstances receive from the United States, and in case of any wound, injury or disease causing death, then the widow, [1]minor children or dependent mother[2] of such member of the militia shall receive such pension and reward, from the time of receiving the injuries on account of which such pension or reward is allowed. No officer or enlisted man shall be entitled, while in active service, to make application for or to receive a pension.

This section was derived from the Military Law of 1908, § 220. It was amended to read as above by L. 1916, ch. 469. The amendments are shown in the footnotes.

Exemption from taxation and execution: see TAX LAW, § 4; Code Civ. Pro., § 1393.

Power of legislature to make appropriation to compensate injured militiamen: see 44 L. R. A. (N. S.) 83 note. *Effect with respect to pension of pensioner becoming inmate of soldiers' home:* see Ann. Cas. 1916C 854 note.

Time of application.— The limitation of ten years to present an application for a state pension, contained in the Military Code of 1898 and the present Military Law, is applicable to claims accruing in 1897. Op. Atty.-Gen. (1913) 33.

Right to pension as distinguished from temporary relief.— Where an injury received while on duty by a national guardsman later honorably discharged continues more than ninety days he is entitled to a pension rather than relief for temporary disability, especially where relief for temporay disability has at no time been given him. Op. Att.-Gen. (1915) 263. And in Op. Atty. Gen. (1915) 470, it was held that the granting of temporary relief under section 223, infra, does not bar the permanent relief provided for by the present section. The attorney-general said in this connection: "While these two sections might have been drawn so that their provisions would be more clearly understood, still I think there can be no doubt that the legislature intended that during the early acute stages of either injury or sickness the soldier should be taken care of and all medical attendance and expenses paid by the state, and if permanent disability followed which was the direct result of such sickness or injury he should be granted permanent relief as provided by section 220 as long as the same continued; but I do not think he can be granted a pension to take effect prior to the time

[1] Word "or," omitted.

[2] Words "or dependent mother," new.

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that his temporary relief ceased. In other words, he cannot be allowed a pension for any of the time when he received temporary relief, and if at any time in the future he should recover the pension should be discontinued as stated in my former opinion."

Right of civilian cook.— Civilian cooks not enlisted in the national guard, injured while working in connection therewith, are not entitled to the pension provided by this section. Op. Atty.-Gen. (1915) 263.

Assignability of pensions.—A pension is not assignable, the pensioner having no property in future payments to be made to him on account thereof. Op. Atty.-Gen. (1893) 204, citing Taft v. Marsilly, (1890) 120 N. Y. 474, 24 N. E. 926, and Nagle v. Stagg, (1874) 15 Abb. Pr. N. S. 348.

Cited.— In Op. Atty.-Gen. (1916), reported in 9 St. Dept. Rep. 409, this section was cited on the question of the right of militiamen to draw pay from the state while in the service of the United States. See supra, § 210.

§ 221. Proof required; striking from roll. Before the name of any person is placed upon the roll under this article, proof shall be made under such regulations as the adjutant-general of the state may from time to time prescribe, that the applicant is entitled to such pension. The adjutant-general of the state, with the approval of the governor, shall cause to be stricken from the pension-roll the name of any person, whenever it appears by satisfactory proof that such name was put upon such roll through false or fraudulent representations. The adjutant-general of the state, with the approval of the governor, may increase or reduce, or withdraw any pension, according to the right and justice and the practice in the United States pension office.

This section was derived from the Military Law of 1908, § 221.

§ 222. Pension examiners and examining boards. The adjutant-general of the state is authorized to appoint pension examiners, whose duty it shall be to inquire into the merits of any claim for pay and care and pension, whether pending or adjudicated, and any person so appointed shall have power to administer oaths, to orally examine witnesses, to issue subpœnas, and to take affidavits and depositions in the course of such examinations. The adjutant-general of the state shall further appoint examining boards, consisting of not more than three medical officers of the national guard or naval militia, who shall under his direction make such examination of claimants as he shall require, and certify the result in such form as he shall prescribe, and any person adversely affected by the report of one medical officer shall be entitled to an examination upon his request before a board consisting of three medical officers.

This section was derived from the Military Law of 1908, ch. 222.

Cited.— This section was cited in Op. Atty.-Gen. (1906) 371.

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§ 223. Pay and care when injured or disabled in service. A member of the national guard or naval militia who shall, when on duty or assembled therefor, in case of riot, tumult, breach of peace, insurrection or invasion, or whenever ordered by the governor, the major-general, or the commanding officer of the naval militia, or called in aid of civil authorities, receive any injury, or incur or contract any disability or disease, by reason of such duty or assembly therefor, or who shall without fault or neglect on his part be wounded or disabled while performing any lawfully ordered duty, which shall temporarily incapacitate him from pursuing his usual business or occupation, shall, during the period of such incapacity, receive the pay provided by this chapter and actual necessary expenses for care and medical attendance.[1] Where a claim is made under this section the adjutant-general of the state may cause examinations of the claimant to be made from time to time by a medical officer or officers designated for the purpose by the adjutant-general of the state, and he may direct the removal of a claimant to, and his treatment in, an hospital designated by the adjutant-general of the state, and if the claimant refuse to permit any such examination or if he refuse to go to such hospital or to follow the advice given or treatment prescribed for him therein, he shall thereby forfeit and be barred from all right to any claim or allowance under this section. Under this chapter no disability shall be considered temporary which continues for more than ninety days from the date of receiving the injury or of incurring or contracting the disease or disability, and pay and expenses for care and medical attendance for more than the said ninety days shall not be allowed. All claims arising under this section shall be inquired into by a medical examiner or by a board of three officers, at least one being a medical officer, to be appointed by the adjutant-general of the state, upon the application of the member claiming to be so incapacitated. Such medical examiner or board shall have the same power to take evidence, administer oaths, issue subpoenas and compel witnesses to attend and testify and produce books and papers, and punish their failure to do so, as is possessed by a general court-martial. The findings of the medical examiner

[1] Sentence omitted which read: "No claim shall be allowed under this section unless the claimant within thirty days after receiving the injury or contracting the disease or disability upon which the claim is made, notifies in writing the adjutant-general of the state of his intention to make such claim."

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or board shall be subject to the approval of the adjutant-general of the state, who may return the proceedings of the medical examiner or board for revision and for taking further testimony. The amount found due such member by said medical examiner or board to the extent that the findings are approved by the adjutant-general of the state, shall be a charge against and be paid in the manner provided by this chapter, by the county in which such duty was rendered, in every case where a county is by this chapter made liable to pay for the performance of military duty. In all other cases such sums shall be paid by this state, in like manner as other military accounts are paid.

This section was derived from the Military Law of 1908, § 223. It was amended to read as above by L. 1912, ch. 174. The amendment is shown in the footnote.

Validity of appropriation by state to pay for injury to member of militia: see Ann. Cas. 1914B 1283 note.

Right to pension as distinguished from temporary relief.— In Op. Atty.-Gen. (1915) 263, the right to a pension as distinguished from temporary relief was considered. And in Op. Atty.-Gen. (1915) 470, it was ruled that a pension might be granted notwithstanding temporary relief previously granted. See supra, § 220 note.

Cited.— This section was cited in Matter of Welch, (1913) 81 Misc. 268, 142 N. Y. S. 27, affirmed 157 App. Div. 943, 142 N. Y. S. 1140, affirmed (1913) 209 N. Y. 304, 103 N. E. 140.

§ 224. Appeals and rehearing. The adjutant-general of the state may disapprove the report of any medical examiner or board appointed under the provisions of this article, and determine the claim made upon the merits. He may upon the application of any claimant made within six months after the service of notice on such claimant, or his attorney, of the disapproval or disallowance of his claim or any part thereof, re-open said claim and order a rehearing before another medical examiner or board. A person making a claim under the provisions of this article may appeal to the adjutant-general of the state from the decision or finding of any medical examiner or board within six months after notice of such decision or finding shall be served on him or his attorney, and the adjutant-general of the state shall hear and determine such appeal on the merits and may take testimony in the same manner as upon an original application and may approve, disapprove or modify the findings and decision of any medical examiner or board.

This section was derived from the Military Law of 1908, § 224.

Reopening claim.— Formerly, while this section did not specifically so provide, it would seem that the adjutant-general could reopen a claim for a

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pension by a member of the national guard after an adverse report by the examining board, if in his judgment the claimant was entitled to a further hearing before the persons designated to examine into the same. Op. Atty.-Gen. (1901) 267.

§ 225. Reports of county treasurers; bonds for military funds; funds of disbanded organizations. Each county treasurer shall report on the first day of March and September of each year, to the adjutant-general of the state, the amount of all moneys received and paid out by him on account of and the amount remaining in his hands to the credit of each military or naval organization, corps or artillery district. The bond now required by law to be given by county treasurers for the faithful discharge of their duties, shall be held to apply to any moneys that may come into their hands under the provisions of this chapter, but no fees or commissions on any such moneys shall be charged, received or retained by any county treasurer. The adjutant-general of the state is hereby authorized and empowered to draw, use and apply to the benefit of the national guard and naval militia any and all moneys and balances remaining in the hands of the several county treasurers of the state, to the credit of any military or naval organization, corps or artillery district which has been disbanded, or to pay audited bills of disbanded military or naval organizations, corps, or artillery districts from such funds, or from unexpended national guard or naval militia appropriations where balances remain. The several county treasurers of this state are authorized and directed to pay to the adjutant-general of the state, upon his order, all moneys remaining in their hands to the credit of any disbanded military or naval organization, corps, or artillery districts. The certificate of the adjutant-general of the state shall be sufficient evidence of the disbandment of any such military or naval organization, corps or artillery district. The use or appropriation by a county treasurer of any money belonging to the military fund of a military or naval organization, corps or artillery district to any other use or purpose different from that authorized by this chapter, shall constitute the crime of larceny and be punished accordingly.

This section was derived from the Military Law of 1908, § 225.

Disposition of funds of disbanded organizations.— Under section 37 of the State Finance Law, unexpended balances of disbanded organizations must be paid to the state treasurer, notwithstanding the provisions of this section in such regard. Op. Atty.-Gen. (1916) reported in 6 St. Dept. Rep. 473. For the grounds on which the attorney-general distinguished Op. Atty.-Gen. (1910) 599, see infra, § 243 note.

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§ 226. Interest on military funds in the hands of the chamberlain of the city of New York or the several county treasurers of the state. Any moneys which may have accrued, or which may hereafter accrue, and be on deposit with the chamberlain of the city of New York, or with the treasurer of any county, as interest upon moneys constituting the military funds of the state, or of military or naval organizations, corps or artillery districts located in the respective counties, shall, except as otherwise provided in this chapter, be subject to the draft of the adjutant-general of the state, for the use, and to be applied to the benefit, of the national guard of the state.

This section was derived from the Military Law of 1908, § 226. It was amended to read as above by L. 1913, ch. 558, § 11. The amendment added the words "except as otherwise provided in this chapter."

Disposition of accrued interest.— Under section 37 of the State Finance Law, all accrued interest on the military funds must be paid to the state treasurer, notwithstanding the provisions of this section in such regard. Op. Atty.-Gen. (1916) reported in 6 St. Dept. Rep. 473. For the grounds on which the attorney-general distinguished Op. Atty.-Gen. (1910) 599, see infra, § 243, note.

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ARTICLE 11

Privileges, Prohibitions and Penalties

Section 235. Exemption from civil process.
236. Right of way.
237. Free passage through toll-gates.
238. Exemption from jury duty.
239. Unlawful conversion of military property; unlawful wearing of uniforms and devices indicating rank.
240. Trespassers and disturbers to be placed in arrest; liquor and huckster sales prohibited.
241. Military parades and organizations by unauthorized bodies prohibited.
242. Separate companies and separate divisions.
243. Amendatory and repealing statutes.
244. Devises or bequests.
245. Officers and employees of state or municipality; absences on military duty; compensation and privileges.
246. Oaths.

§ 235. Exemption from civil process. No person belonging to the active militia of the state shall be arrested on any civil process while going to, remaining at, or returning from any place at which he may be required to attend for military duty.

This section was derived from the Military Law of 1908, § 235.

Relief from civil or criminal liability: see supra, § 14.

Officer mustered in federal service.—An officer of a militia regiment, mustered into the United States service, awaiting orders to move, must be regarded as belonging to the military forces of the state and entitled to the protection given him under this section. People v. Campbell, (1869) 40 N. Y. 133.

§ 236. Right of way. The commanding officer of any portion of the active militia parading or performing any military duty in any street or highway, may require any or all persons in such street or highway to yield the right of way to such militia, provided the carriage of the United States mail, the legitimate functions of the police and the progress and operations of the hospital ambulances and fire engines and fire departments and apparatus of the insurance patrol shall not be interfered with thereby. All others who shall hinder, delay, or obstruct any portion of the

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active militia wherever parading or performing any military duty, or who shall attempt so to do, shall be guilty of a misdemeanor.

This section was derived from the Military Law of 1908, § 236.

§ 237. Free passage through toll-gates. Any person belonging to the military forces of the state going to or returning from any parade, encampment, drill or meeting which he may be required by law to attend, shall, together with his conveyance and the military property of the state in his charge, be allowed to pass free through all toll-gates and over all toll bridges and ferries, if he is in uniform or presents an order for duty or certificate of membership in the active militia.

This section was derived from the Military Law of 1908, § 237.

Unlawfully exacting toll from member of national guard: see PENAL LAW, § 1486.

Unlawfully wearing uniform: see PENAL LAW, § 1484.

Militia not in uniform.— The transport of officers and supplies during an encampment is a state charge where it appears that the various men and officers transported were not in uniform and did not present an order for duty nor certificate of membership in the active militia, as prescribed by this section. Moreover this section does not provide that no payment shall be made by the state for such service but merely that men shall be allowed to pass free over ferries upon complying with certain conditions. Op. Atty.-Gen. (1909) 500, 501.

§ 238. Exemption from jury duty. Every member of the active militia shall be exempt from all jury duty, provided he shall furnish the certificate of his immediate commanding officer that he has performed the duties required of him for the year immediately preceding a summons to act as a juryman or during the period of his service if less than one year. And every such member who shall have served five years and shall have received one or more full and honorable discharges covering that entire period, or who shall have received for that period an honorable discharge or discharges and a full and honorable discharge showing that he has made up the deficiencies in his percentages of duty in prior years and has attained the percentage required for a full and honorable discharge in each year of that period[1] shall

[1] Words "or who shall have received for that period . . . for a full and honorable discharge in each year of that period," new.

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be exempt forever after from all jury duty. The words " all jury duty " as used in this section shall include coroners' juries.

This section was derived from the Military Law of 1908, § 238. It was amended to read as above by L. 1911, ch. 100, § 3; L. 1914, ch. 160, § 4. The amendment by L. 1911, ch. 100, § 3, changed the second sentence which formerly read "And every such member who shall have received a full and honorable discharge shall be exempt forever after from all jury duty." The amendment by L. 1914, ch. 160, § 4, is shown in the footnote.

Exemption of military officers: see JUDICIARY LAW, §§ 546, 635, 720.

Exemption from taxation.— Under former provisions of the Military Law there were certain exemptions from taxation on real and personal property up to $500 for men serving for seven years. Op. Atty.-Gen. (1890) 208.

§ 239. Unlawful conversion of military property; unlawful wearing of uniforms and devices indicating rank. Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the national guard or naval militia, or in any manner pawn or pledge any arms, uniforms, equipments, or other military or naval property, issued under the provisions of this chapter, and any person who shall wear any uniform or any device, strap, knot or insignia of any design or character used as a designation of grade, rank or office, such as are by law or by general regulation, duly promulgated, prescribed for the use of the active militia or similar thereto; except members of the army and navy of the United States and the national guard and naval militia of this or any other state, officers of the independent military organizations so designated in section two hundred and forty-one of this chapter, members of associations wholly composed of soldiers honorably discharged from the service of the United States and members of the order of Sons of Veterans, shall be guilty of a misdemeanor and in addition thereto shall forfeit to the people of this state one hundred dollars for each offense, to be sued for in the name of the people by a judge-advocate. All money recovered by any action or proceeding under this section shall be paid to the adjutant-general of the state who shall apply the same to the use of the active militia.

This section was derived from the Military Law, § 239.

Converting military property: see PENAL LAW, § 1484.

Seizing military stores belonging to state: see PENAL LAW, § 1483.

Unlawfully wearing uniform: see PENAL LAW, § 1484.

Uniform of cadets.— Cadets at a military college have no right to wear shoulder straps similar to those prescribel to denote rank in the national guard while drilling in a state armory. Op. Atty.-Gen. (1900) 250.

Cited.— This section was cited in Op. Atty.-Gen. (1910) 598.

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§ 240. Trespassers and disturbers to be placed in arrest; liquor and huckster sales prohibited. The commanding officer upon any occasion of duty may place in arrest during the continuance thereof any person who shall trespass upon the camp ground, parade ground, armory or other place devoted to such duty, or shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to or returning from any duty.

He may prohibit and prevent the sale or use of all spirituous liquors, wine, ale or beer, the holding of huckster or auction sales, and all gambling within the limits of the post, camp ground, place of encampment, parade or drill under his command or within such limits not exceeding one mile therefrom as he may prescribe. And he may in his discretion abate as common nuisances all such sales.

This section was derived from the Military Law of 1908, § 240.

Trespass upon rifle range and injury to targets: see PENAL LAW, § 1426, subd. 14.

Wilful injury to arsenal, armory or property deposited therein: see PENAL LAW, § 1426, subd. 13.

Bringing liquor in arsenals and armories: see PENAL LAW, § 1485.

§ 241. Military parades and organizations by unauthorized bodies prohibited. No body of men, other than the active militia and the troops of the United States except such independent military organizations as were on the twenty-third day of April, eighteen hundred and eighty-three, and now are, in existence, and such other organizations as may be formed under the provisions of this chapter, shall associate themselves together as a military company or organization, or parade in public with firearms in any city or town of this state. No body of men shall be granted a certificate of incorporation under any corporate name which shall mislead, or tend to mislead, any person into believing that such corporation is connected with or attached to the national guard or naval militia of this state in any capacity or way whatsoever. In case any such certificate has been heretofore or may hereafter be granted, which in the judgment of the adjutant-general of the state, misleads or tends to mislead anyone into believing that such corporation is connected with or attached to the national guard or naval militia in any capacity or way whatsoever, the adjutant-general of the state shall notify such corpora-

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tion, in writing, to forthwith discontinue the use of its said corporate name and forthwith take the necessary steps to change its name pursuant to the statute in such case made and provided, to some name not so calculated to mislead. In the event such proceedings are not forthwith taken and completed within six months from the service of said notice, the attorney-general is authorized and directed to bring an action to procure a judgment vacating or annulling the act of incorporation of such corporation, or any act renewing the corporation, or continuing its corporate existence or annulling the existence of such corporation. No city or town shall raise or appropriate any money toward arming or equipping, uniforming or in any other way supporting, sustaining or providing drill rooms or armories for any such body of men; but associations wholly composed of soldiers honorably discharged from the service of the United States, or members of the order of Sons of Veterans, may parade in public with firearms on Decoration day, or on May first, known as Dewey day, or upon the reception of any regiment or companies of soldiers returing from such service, and for the purpose of escort duty at the burial of deceased soldiers, and students in educational institutions where military science is a prescribed part of the course of instruction, and cadet organizations composed of youths under eighteen years of age, under responsible instructors, may, with the consent of the governor, drill and parade with firearms in public under the superintendence of their instructors. This section shall not be construed to prevent any organization authorized to do so by law from parading with firearms, nor to prevent parades by the national guard or naval militia of any other state. The independent military organizations mentioned in this section not regularly organized as organizations of the national guard or naval militia, are hereby made subject to the orders of the governor in case of emergency or necessity, to aid the national guard or naval militia in quelling invasion, insurrection, riot or breach of the peace, provided the officers and members of such organization shall, when so called upon, first sign and execute and deliver through their commanding officer to the officer to whom it is ordered to report, a form of enlistment in form to be prescribed by the governor in regulations or orders for a term not less than thirty days nor more than ninety days at one time; and if the service of such organization

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shall not be required for the full term of their enlistment they shall be discharged by the order of the governor. All members of such independent organizations when called into service of the state, as herein provided for, shall be equipped and paid by the state, and shall be protected in the discharge of their duties, and in obeying the orders of the governor, as though a part of the national guard or naval militia of the state. Any person violating any provision of this section shall be deemed guilty of a misdemeanor.

This section was derived from the Military Law of 1908, § 241, "Military parades by unauthorized bodies prohibited." It was amended to read as above by L. 1911, ch. 210; L. 1912, ch. 69; L. 1913, ch. 41; L. 1916, ch. 564, § [8] 9. The amendment by L. 1911, ch. 210, added to the second sentence the words "and cadet organizations composed of youths under eighteen years of age under responsible instructors," and changed the last word in the same sentence from "teachers" to "instructors." The amendment by L. 1912, ch. 69, added the words "and organization" to the section head and added the second, third and fourth sentences. The amendment by L. 1913, ch. 41, added the words "Naval Militia" following the words "National Guard" wherever it occurs. The amendment by L. 1916, ch. 364, § [8] 9, added the words "and such other organizations as may be formed under the provisions of this chapter," following the words "in existence," in the first sentence.

Regulation of parades in cities: see GENERAL CITY LAW, § 5.
Village ordinances regulating parades: see VILLAGE LAW, § 90.
Parades on Sunday: see PENAL LAW, § 2151.
Failure to respond to military duty: see PENAL LAW, § 1487.

§ 242. Separate companies and separate divisions. The words "separate company," or "separate division," whenever used in this chapter shall be construed to apply to and mean separate companies or separate divisions existing, organized and recognized by the governor as such on April second, eighteen hundred and ninety-eight, irrespective of their being now or hereafter part of a regiment or battalion, and to such similar organizations as may have been since or may be hereafter created, and as may be certified by the adjutant-general of the state to be separate companies or separate divisions within the meaning of this section, irrespective of their being or becoming parts of a regiment or battalion.

This section was derived from the Military Law of 1908, § 242.

§ 243. Amendatory and repealing statutes. No section or provision of this chapter or any part thereof shall be deemed to be

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repealed, altered or amended by any statute passed by the legislature unless such statute explicitly refers to this chapter as the military law, or by its other titles as part of the general laws or annual legislation and explicitly repeals, alters or amends the same or some part thereof.

This section was derived from the Military Law of 1908, § 243.

Force and effect of section.— Where the legislative intent to repeal or modify the Military Law is plain, the statute will be accorded its intended effect, notwithstanding this section. Under this rule the attorney-general ruled that all funds obtained from the proceeds of the sale of military and naval property found to be unsuitable for use, fines and penalties collected from delinquent officers, unexpended balances to the credit of disbanding organizations and all accrued interest on the military funds should be deposited in the state treasury notwithstanding that sections 16, 142, 225 and 226 of the Military Law contemplated other dispositions. Op. Atty.-Gen. (1916) reported in 6 St. Dept. Rep. 473. The attorney-general distinguished a contrary ruling by his predecessor as follows: "A question similar to that presented here was passed upon by my predecessor, Attorney-General O'Malley, in an opinion printed in the report for 1910 at page 599. There he came to the conclusion that the simple amendment to section 37 of the State Finance Law did not result in its becoming applicable to the military department especially where the particular provisions of the Military Law referred to in the above inquiry were enacted some time after the original passage of section 37 of the State Finance Law. However, the legislative intent must in all cases be our fundamental guide in determining the scope of statutes, and although I do not disagree with the conclusion reached by Mr. O'Malley in the particular case before him, still, I am forced to conclude at this time that the legislature by its amendment to section 37 of the State Finance Law last year expressed an intention having a far more sweeping effect than its amendment of the same statute upon which my predecessor passed."

§ 244. Devises and bequests.[1] A regiment, battalion or squadron[2] a company, troop, battery, division, company of the signal corps, field hospital, detachment of the hospital corps attached to a regiment, battalion or squadron and each unit not hereinbefore mentioned into which the national guard and naval militia may be divided for organization or administrative purposes, may take by devise and bequest real and personal estate for its uses and purposes as a military organization, and may hold, mortgage, sell or otherwise dispose of the same. The title to such property shall vest in the commissioned officer or officers of the organization and if there be three or more of such officers the property shall be managed by their majority vote and disposed of by their two-thirds vote.

New. Added by L. 1909, ch. 536. As added the section was without heading. It was amended to read as above by L. 1911, ch. 101, § 3. The amendments are shown in the footnotes.

1 Section heading new.

2 Words "not part of a regiment," omitted.

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§ 245. [Officers and employees of state or municipality; absence on military duty; compensation and privileges.] Every officer and employee of the state or of a municipal corporation thereof who is a member of the national guard or naval militia shall be entitled to absent himself from his duties or service while engaged in the performance of ordered military or naval duty under the provisions of this chapter and while going to and returning from such duty. No such officer or employee shall be subjected by any person whatever directly or indirectly by reason of such absence to any loss or diminution of his salary or compensation or to any loss or diminution of vacation or holiday privileges or be prejudiced by reason of such absence with reference to promotion or continuance in office or employment or to reappointment to office or to re-employment. The terms "officer" and "employee" as used in this section shall include every person by whatsoever title, description or designation known who receives any pay, salary or compensation of any kind from the state or a municipal corporation thereof.

New. Added by L. 1911, ch. 103. As added the section was without a heading. The heading given above was added for facility of reference.

Duty "under the provisions of this chapter."— This section protects state and municipal officers while employed in military duty as a part of the national guard, whether they are in the service of the United States or are merely on intrastate duty, and whether they enlisted before or after orders were issued for mobilization. Op. Atty.-Gen. (1916) reported in 8 St. Dept. Rep. 510.

§ 246. Oaths. An oath authorized or required by this chapter or the regulations issued thereunder or the statutes or[1] regulations governing the United States army or navy or organized militia[2] may be taken, except in the cases where other provision is expressly made in this chapter, before the following persons who are authorized to administer the same within and without the state, namely: Officers of the national guard of or above the grade of captain when such oath is authorized or required in a matter pertaining to the national guard, and officers of the naval militia of or above the grade of lieutenant when such oath is authorized

[1] Words "statutes or" new.

[2] Words "or organized militia" substituted for words "when in force as provided in this chapter."

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or required in a matter pertaining to the naval militia, except officers of both land and naval forces on the reserve and[1] retired [2]list while unassigned to duty.

New. Added by L. 1911, ch. 103, and amended to read as above by L. 1915, ch. 178. The changes are indicated in the footnotes.

[1] Words "reserve and" new.
[2] Words "and supernumerary" omitted.

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ARTICLE 12

Miscellaneous Provisions

Section 250. Joint service on land.
251. Duties by title of office.
252. Formation of associations; by-laws.
253. Formation of state association.
254. Violation of by-laws; expulsion.
255. Rules and regulations.
256. Custom and usage of the United States army and navy.
257. Organizations not attached to brigade.
258. Laws repealed.
259. Name of this chapter.
260. When to take effect.

§ 250. Joint service on land. When the national guard and naval militia are on duty together at the same time, the commanding officer of the national guard shall have command of the whole force.

This section was derived from the Military Law of 1908, § 250.

§ 251. Duties by title of office. The duties assigned to an officer by title in this chapter shall devolve, in case of absence or disability to command of the officer named, upon the line officer next in rank, except as otherwise provided in this chapter.

This section was derived from the Military Law of 1908, § 251.

§ 252. Formation of associations; by-laws. The officers of any regiment or battalion or squadron not a part of a regiment, the officers of the corps of engineers serving with the engineer troops, and the officers of the coast artillery corps serving in the same artillery district, and the members of any squadron, troop, battery, company, division, company of signal corps, field hospital, ambulance company or detachment or hospital corps, may organize themselves into an association of which the commanding officer shall be president; provided, however, that such associations shall by an affirmative vote of two-thirds of all their members adopt by-laws, rules and regulations not inconsistent with

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this chapter, and which shall conform to the system prescribed in general regulations, and be submitted to the major-general or the commanding officer of the naval militia, as the case may be, for his approval; and which by-laws shall provide that the treasurer of such association shall furnish proper security for the faithful performance of his duties; that all funds of the association shall be kept in a bank of deposit in a separate account in the name of the association; that checks upon such funds shall be signed both by the treasurer and the commanding officer of such association; and that the books and accounts of such association shall at all times be open to the inspection of any official whose duty it is to inspect the organized militia of the state or of any member of the association. Such by-laws may contain such other provisions as are not inconsistent with the limitations herein set forth, and when approved by the major-general or the commanding officer of the naval militia, as the case may be, such by-laws, rules and regulations shall be binding upon all commissioned officers and enlisted men therein; but they may be altered in the manner provided for their adoption from time to time as may be found necessary, provided, however, that the essential provisions hereinabove set forth shall in no case be omitted or qualified. Every association already formed which has not adopted by-laws under the regulations and limitations hereinabove set forth; and every association heretofore formed which has adopted by-laws that do not contain the essential requirements hereinabove set forth, shall adopt revised by-laws containing such requirements and submit the same for approval to their respective commanding officers as above set forth. A troop or squadron of cavalry which has formed an association under this section shall, upon becoming part of a regiment, have the right upon the application of a majority of the members of the field and staff or non-commissioned staff or hospital corps or troop or troops of the same regiment permanently quartered in the armory of that squadron to extend the membership of such association by a majority vote of its members so as to embrace such members of such field and staff or non-commissioned staff or hospital corps or troop or troops, who shall when such extensions are made and while so quartered become and be members of such association for all purposes.

This section was derived from the Military Law of 1908, § 252. It was amended to read as above by L. 1909, ch. 311; L. 1911, ch. 104; L. 1913,

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ch. 273; L. 1915, ch. 187. The amendment by L. 1909, ch. 311, added the words "by an affirmative vote of two-thirds of all their members," in that part of the first sentence beginning "provided, however." The amendment by L. 1911, ch. 104, added the words "ambulance corps." The amendment by L. 1913, ch. 273, added the last sentence in the section with the exception of the word "troop" at the beginning of the sentence, which was added by L. 1915, ch. 187.

Approval of by-laws.— By-laws properly adopted before the enactment of provisions as to their approval continue in force without such approval. People v. Crane, (1891) 125 N. Y. 535, 26 N. E. 736.

Fine for nonattendance at drill.— It seems that a by-law imposing a small fine for failure to attend a drill properly appointed is valid. People v. Crane, (1891) 125 N. Y. 535, 26 N. E. 736.

§ 253. Formation of state association. The officers of the active militia may organize themselves into an association, the name of which shall be "the national guard association of the state of New York." Such association may adopt by-laws not inconsistent with the statutes of the state and alter and amend the same and may take and hold such real and personal property as may be necessary for the purposes of the association.

This section was derived from the Military Law of 1908, § 253.

§ 254. Violation of by-laws; expulsion. For violation of by-laws, rules and regulations of associations organized pursuant to this chapter, enlisted men in addition to trial by a military court, may also be expelled from the organizations to which they belong by a vote of the majority of all its members, and upon such action being confirmed in orders by the commanding officer of the regiment, battalion or squadron not part of a regiment, and in case of an organization, not part of a regiment, battalion or squadron, by the officer to whose command it is attached, in case of the corps of engineers by the colonel, in the case of the coast artillery corps by the ranking officer serving in the artillery district, the name of such person shall be stricken from the roll of the organization of which he was a member, his certificate of membership shall be surrendered and canceled, and he shall cease to be a member thereof, and his time of service in the same shall not be allowed.

This section was derived from the Military Law of 1908, § 254.

§ 255. Rules and regulations. The governor is hereby authorized to make such rules and regulations as he may deem expedient, but such rules and regulations shall conform to this chapter,

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and, as nearly as practicable, to those governing the United States army and navy and when promulgated, shall have the same force and effect as the provisions of this chapter. Such rules and regulations shall not be repealed, altered, amended or added to, except by the major-general or the commanding officer of the naval militia, with the approval of the governor. The rules and regulations in force at the time of the passage of this chapter, shall remain in force until new rules and regulations are approved and promulgated.

This section was derived from the Military Law of 1908, § 255.

Nature of power of governor.— The governor, as commander-in-chief, has full and exclusive power and authority to make and promulgate rules and regulations governing the military and naval forces Op. Atty.-Gen. (1912) 249.

Deduction of fine from pay.— The governor is empowered to make a regulation whereby a fine may be deducted from pay due a member of the militia. Op. Atty.-Gen. (1897) 179.

Cited.— This section was cited in People v. Rand, (1886) 41 Hun 529, 5 N. Y. St, Rep. 31.

§ 256. Custom and usage of the United States army and navy. All matters relating to the organization, discipline and government of the national guard and naval militia, not otherwise provided for in this chapter or in the general regulations, shall be decided by the custom and usage of the United States army or navy, respectively.

This section was derived from the Military Law of 1908, § 256.

§ 257. Organizations not attached to brigade. Organizations or corps not part of or attached to any brigade shall be under the command of the major-general for all purposes.

This section was derived from the Military Law of 1908, § 257.

§ 258. Laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

This section was derived from the Military Law of 1908, § 258.

§ 259. Name of this chapter. This chapter shall be known as the "Military Law."

This section was derived from the Military Law of 1908, § 259.

§ 260. When to take effect. This chapter shall take effect immediately.

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Schedule of Laws Repealed

Revised Statutes.... Part 1, chapter 9, title 7, ...section 4
Revised Statutes.... Part 1, chapter 10, ...All

Laws of	Chapter	Section
1778.....	2.....	All (1st Sess.)
1778.....	9.....	All
1778.....	15.....	All
1778.....	22.....	All
1778.....	28.....	All
1778.....	29.....	All
1778.....	33.....	All
1778.....	37.....	All
1778.....	41.....	All
1778.....	43.....	All
1778.....	46.....	All
1778.....	4.....	All (2d Sess.)
1778.....	5.....	All (2d Sess.)
1779.....	8.....	All (2d Sess.)
1779.....	13.....	All (2d Sess.)
1779.....	21.....	All (2d Sess.)
1779.....	22.....	All (2d Sess.)
1779.....	26.....	All (2d Sess.)
1779.....	28.....	All (2d Sess.)
1779.....	30.....	All (2d Sess.)
1779.....	32.....	All
1779.....	33.....	All
1779.....	34.....	3
1779.....	1.....	All (3d Sess.)
1779.....	2.....	All (3d Sess.)
1779.....	4.....	All (3d Sess.)
1779.....	11.....	All (3d Sess.)
1779.....	13.....	All (3d Sess.)
1779.....	15.....	All (3d Sess.)
1779.....	26.....	All (3d Sess.)
1779.....	28.....	All (3d Sess.)
1780.....	34.....	All
1780.....	39.....	All
1780.....	41.....	All
1780.....	53.....	All

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L. 1909, ch. 41. Schedule of Laws Repealed

Laws of	Chapter	Section	
1780.....	54.....	All	
1780.....	55.....	All	
1780.....	66.....	All	
1780.....	67.....	All	
1780.....	69.....	All	
1780.....	70.....	All	
1780.....	74.....	All	
1780.....	75.....	All	
1780.....	78.....	All	
1780.....	79.....	2	
1780.....	4.....	All	(4th Sess.)
1780.....	6.....	All	(4th Sess.)
1780.....	8.....	All	(4th Sess.)
1780.....	14.....	All	(4th Sess.)
1780.....	15.....	All	(4th Sess.)
1781.....	18.....	All	
1781.....	23.....	All	
1781.....	28.....	All	
1781.....	32.....	All	
1781.....	33.....	All	
1781.....	35.....	All	
1781.....	40.....	All	
1781.....	42.....	All	
1781.....	60.....	All	
1781.....	61.....	All	
1781.....	63.....	All	
1781.....	8.....	All	(5th Sess.)
1781.....	16.....	All	(5th Sess.)
1782.....	22.....	All	
1782.....	27.....	All	
1782.....	39.....	All	
1782.....	40.....	All	
1782.....	42.....	All	
1782.....	46.....	9	
1782.....	7.....	All	(6th Sess.)
1783.....	16.....	All	
1783.....	30.....	All	
1783.....	36.....	All	
1783.....	43.....	All	

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Laws of	Chapter	Section
1783.....	44.....	All
1783.....	47.....	All
1783.....	54.....	All
1784.....	36.....	All
1784.....	65.....	27–31, 36
1785.....	82.....	All
1786.....	25.....	All
1786.....	42.....	All
1787.....	92.....	All
1788.....	95.....	31
1789.....	49.....	All
1791.....	2.....	All
1793.....	45.....	All
1794.....	27.....	All
1794.....	41.....	All
1794.....	58.....	20
1795.....	43.....	All
1796.....	68.....	2–11
1797.....	62.....	11
1798.....	5.....	All (22d Sess., 1st meeting.)
1798.....	6.....	All (22d Sess., 1st meeting.)
1799.....	71.....	All
1801.....	61.....	18
1801.....	166.....	All
1802.....	85.....	All
1802.....	120.....	All
1803.....	86.....	2, 3
1803.....	87.....	All
1804.....	85.....	All
1805.....	100.....	All
1806.....	166.....	All
1807.....	71.....	All
1807.....	166.....	1
1808.....	154.....	All
1808.....	168.....	1–4
1808.....	214.....	All
1808.....	240.....	30, 31
1809.....	17.....	All
1809.....	165.....	All

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Laws of	Chapter	Section
1810.....	121.....	All
1811.....	246.....	50–52
1812.....	139.....	1–16
1812.....	239.....	21
1815.....	16.....	All
1815.....	17.....	All
1815.....	18.....	All
1815.....	24.....	3–6
1815.....	25.....	All
1816.....	50.....	All
1817.....	64.....	1, part relating to exemption from military duty
1817.....	259.....	All
1817.....	269.....	7
1818.....	222.....	All
1818.....	288.....	3
1819.....	219.....	All
1820.....	247.....	All
1821.....	211.....	All
1823.....	244.....	All
1824.....	247.....	All
1824.....	269.....	All
1825.....	290.....	All
1827.....	323.....	All
1828.....	19.....	All (2d Meet.)
1828.....	20.....	15, ¶ 9 (2d Meet.)
1828.....	21.....	1, ¶¶ 160, 162, 259, 396, 414 (2d Meet.)
1829.....	335.....	All
1831.....	257.....	All
1835.....	153.....	All
1835.....	304.....	All
1838.....	204.....	All
1839.....	361.....	All
1839.....	367.....	2
1840.....	230.....	All
1840.....	350.....	All
1842.....	64.....	2
1842.....	134.....	All
1845.....	69.....	All

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Laws of	Chapter	Section
1846.....	65.....	1
1846.....	139.....	All
1846.....	270.....	All
1847.....	180.....	All
1847.....	205.....	All
1847.....	290.....	All
1847.....	349.....	1
1847.....	440.....	All
1847.....	494.....	All
1848.....	100.....	Part relating to military service
1848.....	188.....	Part relating to military service
1848.....	220.....	All
1848.....	227.....	All
1849.....	254.....	All
1849.....	307.....	All
1849.....	316.....	All
1849.....	412.....	All
1850.....	85.....	All
1850.....	343.....	All
1851.....	166.....	All
1851.....	180.....	All
1851.....	241.....	All
1851.....	508.....	All
1852.....	199.....	All
1852.....	204.....	All
1852.....	219.....	All
1852.....	240.....	All
1852.....	385.....	All
1853.....	7.....	All
1853.....	371.....	All
1854.....	398.....	All
1855.....	228.....	All
1855.....	261.....	All
1855.....	521.....	All
1855.....	536.....	All
1857.....	391.....	All
1858.....	129.....	All
1858.....	343.....	All
1859.....	176.....	All

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L. 1909, ch. 41. Schedule of Laws Repealed

Laws of	Chapter	Section
1860.....	18.....	All
1861.....	277.....	All
1861.....	292.....	All
1862.....	397.....	All
1862.....	421.....	All
1862.....	477.....	All
1863.....	113.....	All
1863.....	184.....	All
1863.....	409.....	All
1863.....	425.....	All
1864.....	2.....	All
1864.....	51.....	All
1864.....	334.....	All
1865.....	29.....	1–6, 8–14
1865.....	41.....	1–6, 8–11
1865.....	84.....	All
1865.....	226.....	1, 2, 4, 5
1865.....	325.....	8
1865.....	612.....	All
1865.....	690.....	All
1865.....	744.....	All
1866.....	468.....	All
1866.....	610.....	All
1866.....	665.....	All
1866.....	809.....	All
1867.....	502.....	All
1868.....	651.....	All
1869.....	645.....	1, part amending L. 1862, Ch. 477, § 15
1869.....	778.....	All
1870.....	80.....	All
1872.....	91.....	All
1872.....	517.....	All
1872.....	518.....	All
1872.....	699.....	All
1872.....	761.....	All
1874.....	268.....	All
1874.....	386.....	All
1875.....	223.....	All

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Laws of	Chapter	Section
1875.....	518.....	All
1876.....	29.....	All
1876.....	429.....	All
1877.....	418.....	All
1878.....	35.....	All
1878.....	275.....	All
1878.....	369.....	All
1879.....	11.....	3
1879.....	92.....	All
1880.....	546.....	All
1880.....	547.....	All
1883.....	299.....	All
1884.....	71.....	All
1884.....	91.....	All
1884.....	305.....	All
1884.....	322.....	All
1884.....	323.....	All
1885.....	118.....	All
1885.....	268.....	All
1885.....	310.....	All
1886.....	412.....	All
1886.....	487.....	All
1886.....	668.....	All
1887.....	51.....	1
1887.....	247.....	All
1887.....	330.....	All
1887.....	611.....	All
1887.....	649.....	All
1888.....	292.....	All
1888.....	329.....	All
1888.....	332.....	All
1888.....	528.....	All
1889.....	396.....	All
1889.....	492.....	All
1890.....	360.....	All
1890.....	485.....	All
1891.....	243.....	All
1891.....	261.....	All
1892.....	29.....	All

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L. 1909, ch. 41. Schedule of Laws Repealed

Laws of	Chapter	Section
1892.....	468.....	All
1892.....	472.....	All
1892.....	708.....	All
1893.....	559.....	All
1894.....	389.....	All
1894.....	457.....	All
1894.....	554.....	All
1895.....	600.....	All
1895.....	728.....	All
1895.....	733.....	All
1895.....	924.....	All
1896.....	197.....	All
1896.....	360.....	All
1896.....	668.....	All
1896.....	853.....	All
1897.....	591.....	All
1897.....	690.....	All
1898.....	212.....	All
1898.....	601.....	All
1899.....	240.....	All
1899.....	507.....	All
1899.....	508.....	All
1900.....	746.....	All
1901.....	314.....	All
1903.....	74.....	All
1903.....	75.....	All
1903.....	76.....	All
1903.....	77.....	All
1903.....	211.....	All
1903.....	213.....	All
1903.....	271.....	All
1903.....	435.....	All
1904.....	24.....	All
1904.....	25.....	All
1904.....	147.....	All
1904.....	149.....	All
1904.....	310.....	All
1904.....	321.....	All
1904.....	753.....	All

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Laws of	Chapter	Section
1905.....	310.....	All
1905.....	419.....	All
1905.....	617.....	All
1905.....	618.....	All
1905.....	694.....	All
1906.....	16.....	All
1906.....	17.....	All
1906.....	18.....	All
1906.....	104.....	All
1906.....	105.....	All
1906.....	133.....	All
1906.....	134.....	All
1906.....	160.....	All
1906.....	201.....	All
1906.....	420.....	All
1907.....	312.....	All
1907.....	313.....	All
1907.....	481.....	All
1908.....	1.....	All
1908.....	231.....	All
Code Civil Procedure.....		107

NOTES TO SCHEDULE OF REPEALS

Prepared by the Board of Statutory Consolidation and printed in their report of 1907, *at page* 1765.

R. S. Pt. 1, Ch. 10. Partly amended "to read as follows" and thus repealed by construction. Balance superseded by L. 1854, Ch. 398.

L. 1778, Ch. 2 (1st session). Relates to military matters in general growing out of the War of the Revolution. Temporary in effect and obsolete.

L. 1778, Ch. 9 (1st session). Same.

L. 1778, Ch. 28 (1st session). Same.

L. 1778, Ch. 37 (1st session). Same.

L. 1778, Ch. 41 (1st session). Same.

L. 1778, Ch. 43 (1st session). Same.

L. 1778. Ch. 4 (2d session). Same.

L. 1779, Ch. 8 (2d session). Same.

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L. 1779, Ch. 13 (2d session). Same.
L. 1779, Ch. 21 (2d session). Same.
L. 1779, Ch. 22 (2d session). Same.
L. 1779, Ch. 28 (2d session). Same.
L. 1779, Ch. 32 (2d session). Same.
L. 1779, Ch. 33 (2d session). Same.
L. 1779, Ch. 1 (3d session). Same.
L. 1779, Ch. 2 (3d session). Same.
L. 1779, Ch. 4 (3d session). Same.
L. 1779, Ch. 11 (3d session). Same.
L. 1779, Ch. 15 (3d session). Same.
L. 1779, Ch. 28 (3d session). Same.
L. 1780, Ch. 34 (3d session). Same.
L. 1780, Ch. 39 (3d session). Same.
L. 1780, Ch. 41 (3d session). Same.
L. 1780, Ch. 53 (3d session). Same.
L. 1780, Ch. 54 (3d session). Same.
L. 1780, Ch. 66 (3d session). Same.
L. 1780, Ch. 67 (3d session). Same.
L. 1780, Ch. 70 (3d session). Same.
L. 1780, Ch. 75 (3d session). Same.
L. 1780, Ch. 78 (3d session). Same.
L. 1780, Ch. 4 (4th session). Same.
L. 1780, Ch. 6 (4th session). Same.
L. 1780, Ch. 14 (4th session). Same.
L. 1780, Ch. 15 (4th session). Same.
L. 1781, Ch. 18 (4th session). Same.
L. 1781, Ch. 23. Same.
L. 1781, Ch. 32. Same.
L. 1781, Ch. 33. Same.
L. 1781, Ch. 40. Same.
L. 1781, Ch. 42. Same.
L. 1781, Ch. 60. Same.
L. 1781, Ch. 61. Same.
L. 1781, Ch. 8 (5th session). Same.
L. 1781, Ch. 16 (5th session). Same.
L. 1782, Ch. 22 (5th session). Same.
L. 1782, Ch. 40 (5th session). Same.
L. 1782, Ch. 42 (5th session). Same.
L. 1782, Ch. 46, § 9 (5th session). Same.

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L. 1783, Ch. 16. Same.
L. 1783, Ch. 30. Same.
L. 1783, Ch. 43. Same.
L. 1783, Ch. 44. Same.
L. 1783, Ch. 47. Same.
L. 1784, Ch. 65, §§ 27–29, 34. Same.
L. 1785, Ch. 82. Same.
L. 1786, Ch. 42. Same.
L. 1789, Ch. 49. Same.
L. 1794, Ch. 27. Same.
L. 1794, Ch. 41. Same.
L. 1794, Ch. 58, § 20. Same.
L. 1795, Ch. 43. Same.
L. 1798, Ch. 5 (22d session, 1st meeting). Same.
L. 1803, Ch. 86, §§ 2, 3. Section 2 is repealed. Section 3 temporary and obsolete.
L. 1804, Ch. 85. Temporary and obsolete.
L. 1805, Ch. 100, § 1. Additional allowance to the commissary of military stores.
L. 1806, Ch. 166. Purchase and distribution of ordnance property. Obsolete.
L. 1807, Ch. 71. Organization of a regiment. Obsolete.
L. 1807, Ch. 166, § 1. Exemption of Friends from military duty. Superseded by R. S., Pt. 1, Ch. 4, § 51.
L. 1808, Ch. 168, §§ 1-4. Temporary and obsolete.
L. 1808, Ch. 214. Temporary and obsolete.
L. 1809, Ch. 17. Erection of fortifications. Obsolete.
L. 1812, Ch. 239, § 21. Exercises for "the rifle corps." Obsolete.
L. 1815, Ch. 16. Relates to the war of 1812. Obsolete.
L. 1815, Ch. 17. Same.
L. 1815, Ch. 18. Same.
L. 1816, Ch. 50. Exemption of Shakers from military duty. Superseded by R. S., Pt. 1, Ch. 4, § 5.
L. 1818, Ch. 288, § 3. Relates to defense of fortifications which are now the property of the United States. Obsolete.
L. 1828, Ch. 19 (2d meeting). Provides for certain military courts. Covered by Military Code, Art. 7.
L. 1828, Ch. 20, § 15, ¶ 9 (2d meeting). Amends a section of the Revised Statutes by inserting two words. Obsolete.

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L. 1829, Ch. 335. Extends certain obsolete provisions of the Revised Statutes to the county of Kings and provides for drilling and discipline of militia in said county. Obsolete.

L. 1831, Ch. 257. Compensation and office of the Adjutant-General. Superseded by Military Code.

L. 1835, Ch. 304. Amendatory of Revised Statutes. Superseded by L. 1854, Ch. 398, which provided a complete military law.

L. 1837, Ch. 320, § 3. Clerk hire in office of Adjutant-General. Covered by Military Code, § 161.

L. 1838, Ch. 204. Extends certain obsolete and partly repealed provisions of the Revised Statutes to the county of Queens. Obsolete.

L. 1839, Ch. 361. Provides for selecting and furnishing of a book of regulations. Covered by Military Code, § 15, subd. 2.

L. 1840, Ch. 230. Repealed so far as it relates to the city of New York which is, in effect, a repeal of the entire statute.

L. 1840, Ch. 350. Fines for nonappearance at parade. Covered by Military Code, § 103.

L. 1842, Ch. 64, § 2. Extends certain provisions of the Revised Statutes to certain organizations in Westchester, Queens and Suffolk counties. Obsolete.

L. 1847, Ch. 180. Relates to Mexican war. Obsolete.

L. 1847, Ch. 205. Organization of first division of militia. Superseded by L. 1870, Ch. 80.

L. 1847, Ch. 290. Enrollment of the militia. Part repealed. Balance superseded by L. 1854, Ch. 398.

L. 1847, Ch. 440. See L. 1847, Ch. 205.

L. 1847, Ch. 494. Amendatory of L. 1847, Ch. 290, which was superseded by L. 1854, Ch. 398. Obsolete.

L. 1848, Ch. 220. Same.

L. 1848, Ch. 227. Provides that the commissary-general shall give a bond. Office abolished. Obsolete.

L. 1849, Ch. 254. First division of the militia. Part repealed. Balance superseded by L. 1870, Ch. 80, Art. 3.

L. 1849, Ch. 307. Part repealed. Balance superseded by L. 1854, Ch. 398.

L. 1849, Ch. 316. Brigade inspectors. Superseded by L. 1854, Ch. 398.

L. 1849, Ch. 412. Relates to the organization of the militia. Superseded by L. 1854, Ch. 398.

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L. 1850, Ch. 85. Section 1 superseded by L. 1870, Ch. 80. Sections 2, 3 by L. 1854, Ch. 398. Section 4 repealed, and § 5 is when to take effect.

L. 1850, Ch. 343. Repealed "so far as it relates to the city of New York," which is, in effect, a repeal of the whole. Obsolete.

L. 1851, Ch. 166. Superseded by L. 1870, Ch. 80.

L. 1851, Ch. 180. Enrollment and organization of the militia. Superseded by L. 1854, Ch. 398.

L. 1851, Ch. 241. Relates to a certain battalion in Richmond county. Obsolete.

L. 1851, Ch. 508. Two-year pension for survivors of Mexican war. Temporary and obsolete.

L. 1852, Ch. 199. Relates to the application of certain obsolete and superseded acts. Obsolete.

L. 1852, Ch. 204. Organization of a regiment in Kings county. Abrogated by L. 1854, Ch. 398.

L. 1852, Ch. 219. See L. 1851, Ch. 508.

L. 1852, Ch. 240. Organization of the militia. Superseded by L. 1854, Ch. 398.

L. 1852, Ch. 385. Enrollment of the militia. Superseded by L. 1854, Ch. 398.

L. 1853, Ch. 7. Provides for organization of a new regiment. Superseded by L. 1854, Ch. 398.

L. 1853, Ch. 371. Provides for organizing certain survivors of the Mexican War into a regiment for ten years. Temporary.

L. 1854, Ch. 398. Part repealed. Balance obsolete.

L. 1855, Ch. 228. Explains L. 1854, Ch. 398, which is repealed in part. Obsolete.

L. 1855, Ch. 521. Salary of Adjutant-General. Covered by Military Code, § 161.

L. 1857, Ch. 391. Provides for the rank of colonel by brevet in certain cases. Covered by Military Code, § 60.

L. 1859, Ch. 176. Relates to pensions for survivors of war of 1812. None such living. Obsolete.

L. 1860, Ch. 18. See preceding note.

L. 1861, Ch. 277. Relates to military matters during War of the Rebellion. Obsolete.

L. 1861, Ch. 292. Equipment of militia. Temporary.

L. 1862, Ch. 397. War of the Rebellion. Obsolete.

L. 1862, Ch. 421. War of the Rebellion. Obsolete.

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L. 1863, Ch. 184. War of the Rebellion. Obsolete.

L. 1863, Ch. 409. War of the Rebellion. Obsolete.

L. 1864, Ch. 2. War of the Rebellion. Obsolete.

L. 1865, Ch. 29. Part repealed. War of the Rebellion. Obsolete.

L. 1865, Ch. 41. Part repealed. War of the Rebellion. Obsolete.

L. 1865, Ch. 84. Provides for establishment and maintenance of a parade ground in the city of New York. No longer maintained. Obsolete.

L. 1865, Ch. 226, §§ 1, 2, 4, 5. War of the Rebellion. Obsolete.

L. 1865, Ch. 612. Amends the Military Law of 1862, which was repealed by L. 1870, Ch. 80, § 268. Obsolete.

L. 1866, Ch. 468. Organizes a certain cavalry regiment. Obsolete.

L. 1872, Ch. 517. War of 1812 pensions. Last survivor died May 13, 1905.

L. 1872, Ch. 518. Allowance to mounted batteries. Obsolete.

L. 1876, Ch. 429. Temporary and obsolete.

L. 1877, Ch. 418. Temporary and obsolete.

L. 1879, Ch. 11, § 3. Provides that uniforms and equipment shall be kept in lockers. Covered by Military Code and Regulations of the National Guard.

L. 1880, Ch. 546. Provides for a revision of the Military Code. Temporary.

L. 1885, Ch. 268. Amends the Military Code of 1883, which is repealed. Obsolete.

L. 1886, Ch. 668. Issue of arms to the Grand Army. Consolidated in Military Code, § 308.

L. 1887, Ch. 51, § 1. Provides that the Adjutant-General shall procure records relating to volunteers in the War of the Rebellion. Covered by Military Code, § 16.

L. 1888, Ch. 528. Meeting rooms for Grand Army. Covered by Military Code, § 143.

L. 1895, Ch. 600. Board to examine and report as to arms for National Guard. Temporary and obsolete.

L. 1896, Ch. 197. See preceding note.

L. 1898, Ch. 212. This chapter, which is the old Military Code, is recommended for repeal because all its live provisions have been consolidated in Military Law.

L. 1898, Ch. 601. Amends L. 1893, Ch. 559, § 178, and passed at the same session of the Legislature as L. 1898, Ch. 212, which

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repealed said act of 1893. Fully covered by L. 1898, Ch. 212, § 139, as amended by L. 1906, Ch. 134, § 4.

L. 1899, Ch. 507. Part not repealed consolidated in Military Law.

L. 1901, Ch. 314. Parts not repealed consolidated in Military Law.

L. 1903, Ch. 74. Parts not repealed consolidated in Military Law.

L. 1903, Ch. 75. Partly repealed. Balance consolidated in Military Law.

L. 1903, Ch. 76. Consolidated in Military Law.

L. 1903, Ch. 77. Parts not repealed consolidated in Military Law.

L. 1903, Ch. 211. Consolidated in Military Law.

L. 1903, Ch. 213. Parts not repealed consolidated in Military Law.

L. 1903, Ch. 435. Consolidated in Military Law.

L. 1904, Ch. 147. Consolidated in Military Law.

L. 1904, Ch. 149. Consolidated in Military Law.

L. 1904, Ch. 310. Consolidated in Military Law.

L. 1905, Ch. 617. Consolidated in Military Law.

L. 1905, Ch. 618. Parts not repealed, as indicated in the schedule, are consolidated in Military Law.

L. 1905, Ch. 694. Consolidated in Military Law.

L. 1906, Ch. 16. Consolidated in Military Law.

L. 1906, Ch. 17. Consolidated in Military Law.

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L. 1906, Ch. 134. Consolidated in Military Law.

L. 1906, Ch. 201. Consolidated in Military Law.

L. 1906, Ch. 420. Consolidated in Military Law.

L. 1907, Ch. 312. Consolidated in Military Law.

L. 1907, Ch. 313. Consolidated in Military Law.

L. 1907, Ch. 481. Consolidated in Military Law.

Code Civil Procedure, § 107. Superseded by L. 1898, Ch. 212, § 86.

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McKINNEY'S

CONSOLIDATED LAWS
OF
NEW YORK

ANNOTATED

Book 35

Military Law

1943

Cumulative Annual Pocket Part

Insert this Pocket Part in back of volume

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EXPLANATION

This Cumulative Annual Pocket Part contains all the laws of a general and permanent nature to end of the Regular Session of the 166th Legislature of 1943.

The laws are classified to McKinney's Consolidated Laws of New York, Annotated.

Under the same classification will be found the annotations from the decisions of State and Federal Courts construing the laws.

The annotations close with cases reported in:

New York Supplement, Second Series - - - vol.	40
New York Reports - - - - - - - - - - -	289
Appellate Division Reports - - - - - - - -	264
Miscellaneous Reports - - - - - - - - - -	178
North Eastern Reporter, Second Series - - -	47
Supreme Court Reporter - - - - - - - - -	63
United States Reports - - - - - - - - - -	317
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Federal Reporter, Second Series - - - - -	133
Federal Supplement - - - - - - - - - - -	48
Federal Rules Decisions - - - - - - - - -	3
State Department Reports - - - - - - - -	64
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Later laws and annotations will be cumulated in subsequent pamphlets and annual pocket parts.

CITE THIS POCKET PART BY LAW AND SECTION THUS: ———— LAW, § ——

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STATE OF NEW YORK

Department of State ss.

In pursuance of the authority vested in me, by section 380 of the Civil Practice Act, I, Thomas J. Curran, Secretary of State, hereby certify that the copies of the laws contained in this volume are correct transcripts of the text of the original laws, and in accordance with such section are entitled to be read in evidence.

Given under my hand and the seal of office of the Department of State, at the Capitol in the City of Albany, this 2d day of June, 1943.

THOMAS J. CURRAN
SECRETARY OF STATE

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SCHEDULE OF NEW SECTIONS

The following list enumerates the new sections added to this law during the period of this pocket part.

ARTICLE 1

The Militia of the State

§ 5-a. Organizations and volunteers from the reserve militia.
16. Adjutant-general to have powers and duties of armory commissions; commissions abolished.
17-a. Powers and duties of adjutant-general with respect to a certain monument; former commission therefor abolished.
19-a. Retiring certain veterans and granting them pensions.
20-a. [Spanish war refund moneys.]

ARTICLE 1-A

Bureau for Relief of Sick and Disabled New York Veterans

§ 24. Organization.
24-a. Relief commissioners.
24-b. Regulations.
24-c. Offices.
24-d. Applications for relief.
24-dd. Applications for relief of veterans of world war number two.
24-e. Additional papers to be filed.
24-f. Examination; determination; payments.
24-g. Penalty for false statement.

ARTICLE 1-B

Annuity to Veterans Permanently and Totally Disabled by Reason of Loss of Sight

§ 24-m. Creation of annuity.
24-n. Evidence of service and disability.
24-o. Persons who may receive annuity.

ARTICLE 1-C

State Camp for Veterans

§ 25. Supervision and control of camp.
25-a. Board of visitors.
25-b. Powers of board.
25-c. Commandant.
25-d. Duties of commandant; officers and employees.
25-e. Transfer of powers and duties.
25-f. Admission to camp.

ARTICLE 2

The National Guard

§ 31-a. [Control of camp grounds and ranges.]

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ARTICLE 2-A

The New York Guard

§ 40. Organization.
40-a. Organization, composition and strength of the New York guard in time of war.
41. Commissioned officers.
41-a. Purchase of shoes for enlisted men in the New York guard.
42. Enlisted men.
43. Duties, privileges and immunities.
44. Command of the New York guard.

ARTICLE 3

The Naval Militia of the State

§ 60. Allowance for salary of chief of staff.
61. Enlistment, transfer and discharge.
62. Chief petty officers, petty officers and enlisted men of the naval militia reserve.

ARTICLE 4

Commissioned Officers of the National Guard

§ 77-a. National guard reserve.
86. Staff officers.

ARTICLE 7

Military Courts

§ 132. General courts-martial.
133. Special courts-martial.
134. Summary courts-martial.
135. Sentences to confinement.
136. Sentences of dismissal.
137. Warrants, subpoenas, attachments.
143. Naval militia.

ARTICLE 9

Armories

§ 182. Armory property in city of New York.
185. Supervision of armory building; rules and regulations for.
186. Designation of officer in charge and control of armory building in New York city; apportionment of quarters.
195. Sale of armories and application of proceeds.

ARTICLE 11

Privileges, Prohibitions and Penalties

§ 246. Provisions applicable to public employees who are absent on military duty.
246-a. Members of pension system absent on military duty.
247. Conspicuous service cross.
249. State and municipal officers and employees granted leaves of absence on July fourth in certain cases.

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ARTICLE 12

Miscellaneous Provisions

§ 256-a. Duplicate service medals.
256-b. Record of burial place of persons who served in the military or naval service of the United States.

ARTICLE XIII

New York State Soldiers' and Sailors' Civil Relief Act

§ 300. Findings and declaration of emergency.
301. Definitions.
302. Stay, etc., to persons secondarily liable.
303. Protection against judgment in default, etc.
304. Proceedings to be stayed unless interest unaffected by military service.
305. Relief against fines and penalties, etc.
306. Actions against persons in service.
307. Continuance of stay, etc.
308. Statutes of limitations; time of military service not included.
309. Evictions; restraint.
310. Installment purchases.
311. Mortgages.
312. Repossession proceedings.
313. Taxes; taxes on real property, etc.
314. Taxes; income taxes.
315. Policies of insurance; policies not to lapse or be forfeited.
316. Reemployment in private industry.
317. Evasive transfers of interest.
317-a. Effect of death of donor of power of attorney.
318. Certificates as to service.
319. Interlocutory orders.
320. Separability.
321. Inconsistent provisions in other acts.
322. Duration of the emergency.
323. Short title.

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MILITARY LAW

Badges for service in China, Philippines and Spanish campaigns: see book 65, UNCONSOLIDATED LAWS, § 2216.

Service badges, ribbons and medals: see book 65, UNCONSOLIDATED LAWS, §§ 2221–2225.

Military equipments for local organizations; provisions for emergencies and support of persons dependent on men in military service, by municipalities: see GENERAL MUNICIPAL LAW, § 77-a.

Ordnance property, loan of to commissions, institutions and municipalities: see book 65, UNCONSOLIDATED LAWS, § 1936.

CHAPTER 36 OF THE CONSOLIDATED LAWS.

MILITARY LAW.

Article I. The militia of the state. (§§ 1–23.)
I-a. Military and disciplinary training. (§§ 26–29-d.)
II. The national guard. (§§ 30–33.)
II-a. The New York guard. (§§ 40–44.)
III. The naval militia of the state. (§§ 50–62.)
IV. Commissioned officers of the national guard. (§§ 70–86.)
V. Enlisted men of the national guard. (§§ 95–102.)
VI. Service of the national guard and naval militia. (§§ 110–119.)
VII. Military courts. (§§ 130–143.)
VIII. Arms, uniforms and equipments for the national guard and naval militia. (§§ 165–169.)
IX. Armories. (§§ 175–198.)
X. Pay and allowances. (§§ 210–226.)
XI. Privileges, prohibitions and penalties. (§§ 235–247.)
XII. Miscellaneous provisions. (§§ 250–259.)

Enumeration of articles, with their running titles, amended to read as above by L. 1921, ch. 588, § 56, in effect May 5, 1921.

ARTICLE I.

THE MILITIA OF THE STATE.

Section 1. Persons subject to militia duty; exemptions.
2. Enrollment.
3. Notice of enrollment; exemption claims.
4. Examination of assessment-rolls and poll-lists.
5. Designation and division of the militia.
5-a. Organizations and volunteers from the reserve militia.
6. Commander-in-chief.
7. Staff of the governor.
8. Power of the governor in case of invasion.
9. Drafts of volunteers from the militia.
10. Drafts.
11. Punishment for failure to appear.
12. Organization of reserve militia when ordered out.
13. Proclamation of state of insurrection.
14. When articles of war of the United States to be in force.
15. Relief from civil and criminal liability; security for costs.
17. The adjutant-general of the state.
18. Contingent fund.

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Section 19. The adjutant-general of the state, his pay, assistants and employees.
19-a. Retiring veterans of the late civil war, Spanish-American war and world war and granting them pensions.
20. Bureau of records; completion and preservation of the records and relics; free inspection of the same and quarters in the capitol.
21. Armory commissions.
22. Legal adviser of the commander-in-chief.
23. Audit and payment of accounts.

Enumeration of sections and their running titles in article one amended to read as above by L. 1917, ch. 644, § 35; L. 1921, ch. 588, § 57, in effect May 5, 1921.

* So in original; "or" probably intended.

ARTICLE I-A.

(Repealed—see infra, note under Article 1-A)

L. 1917, ch. 644, § 34, provided as follows: "§ 34. The enumeration of articles and their titles in said chapter at its commencement is hereby amended by inserting 'I A. Military and disciplinary training. (§§ 26–29-d)' immediately after 'Article I. The militia of the state. (§§ 1–22).'"

ARTICLE II.

THE NATIONAL GUARD.

Section 30. Composition and strength.
31. Organization and command of the national guard.
32. Aides.
33. Colored regiment of infantry.

Enumeration of sections and their running titles in article two amended to read as above by L. 1917, ch. 644, § 36; L. 1921, ch. 588, § 58, in effect May 5, 1921.

ARTICLE III.

THE NAVAL MILITIA OF THE STATE.

Section 50. Composition and strength.
51. Command of the naval militia.
56. Civilian cooks.
58. Eligibility required to receive a commission in the naval militia.
59. Appointed officers of the naval militia.
60. Allowance for salary of senior line officer of the naval militia.
61. Enlistment, transfer and discharge.
62. Chief petty officers, petty officers and enlisted men of the naval militia reserve.

Enumeration of sections and their running titles in article three amended to read as above by L. 1921, ch. 588, § 59, in effect May 5, 1921.

ARTICLE IV.

COMMISSIONED OFFICERS OF THE NATIONAL GUARD.

Section 70. Commissions.
71. Eligibility required to receive a commission in the national guard.
72. Examinations.
73. Examining boards.
74. Appointed officers of the national guard.
75. Oath of office.

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Section 76. Brevet commissions.
77. State reserve list.
77-a. National guard reserve.
78. Resignation.
79. Retirement.
80. Examination and discharge of officers.
80-a. Reserve list for enlisted men.
81. Dismissal.
82. Removal.
86. Staff officers.

Enumeration of sections and their running titles in article four amended to read as above by L. 1917, ch. 644, § 37; L. 1921, ch. 588, § 60, in effect May 5, 1921.

ARTICLE V.

Enlisted Men of the National Guard.

Section 95. Enlistments.
96. Enlistment papers.
97. Transfers.
98. Warrant officers; non-commissioned staff and chief petty officers; non-commissioned and petty officers.
99. Dropping from the rolls.
100. Restoration to duty.
101. Discharge.
102. War service.

Enumeration of sections and their running titles in article five amended to read as above by L. 1917, ch. 644, § 38; L. 1921, ch. 588, § 61, in effect May 5, 1921.

ARTICLE VI.

Service of the National Guard and Naval Militia.

Section 110. Responsibility for efficiency for service.
111. Drills and parades.
112. Small arms practice.
113. Service without the state.
114. Application of this chapter to service without the state.
115. Use of troops in civil disorders.
116. In case of insurrection or invasion.
117. Warning for duty.
118. Excuses from duty.
119. Discipline and exercise.

Enumeration of sections and their running titles in article six amended to read as above by L. 1921, ch. 588, § 62, in effect May 5, 1921.

ARTICLE VII.

Military Courts.

Section 130. Military courts.
131. Courts of inquiry.
132. General courts martial.
133. Special courts martial.
134. Summary courts martial.
135. Sentences to confinement.
136. Sentences of dismissal.
137. Warrants, subpoenas, attachments.
138. Form of mandate, execution by public officers.
139. Payment of fines and disposition thereof.
140. Marshals; appointment, bonds and duties.

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Section 141. Indemnity for action of military court.
142. Presumption of jurisdiction.
143. Naval militia.

L. 1917, ch. 644, § 39, amended the enumeration of sections and their running titles in article seven of the Military Law as above given.

ARTICLE VIII.

Arms, Uniforms and Equipments for the National Guard and Naval Militia.

Section 165. Organizations.
166. Commissioned officers.
167. Responsibility for public property.
168. Purchase of uniforms and equipments.
169. Purchases from the United States.

L. 1917, ch. 644, § 40, amended the enumeration of sections and their running titles in article eight of the Military Law as above given.

ARTICLE IX.

Armories.

Section 175. Definition of armory.
176. Brigade districts.
177. Expenses of armories, equipment and maintenance, a charge on the state.
178. Adjutant-general to furnish armories.
179. Armories and headquarters; how provided for or constructed.
180. Armories to be altered, repaired and equipped by adjutant-general.
181. Headquarters for regiments and battalions composed of divisions, separate troops or companies.
182. Armory property in city of New York.
183. Acquisition of sites and additional lands for armories by the state.
184. Control of armories.
185. Supervision of armory building; rules and regulations for.
186. Designation of officer in charge and control of armory building in New York city; apportionment of quarters.
187. Armory employees.
188. Laborers.
189. Compensation of employees in armories.
190. Armorers and employees for the naval militia.
191. Armories for naval militia.
192. Use of armories.
193. Inventory of property and accountability therefor.
194. Disposal of useless property.
195. Sale of armories and application of proceeds.

Enumeration of sections and their running titles in article nine amended by L.1921, c. 587, § 14; L.1942, c. 932, § 1, eff. July 1, 1942.

ARTICLE X.

Pay and Allowances.

Section 210. Pay.
211. Pay of troops when used in civil disorders.
212. Pay of officers serving on boards, commissions and courts.
213. Payment of expenses of summary courts-martial.
214. Pay of officers and enlisted men assigned to special duty.

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Section 215. Allowances for officers.
216. Allowances for military organizations; military fund.
217. Audit and expenditure of funds.
218. Allowances for headquarters.
219. Allowance for salaries and office expenses of headquarters of the national guard.
219-a. Retired officers; compensation.
220. Pensions.
221. Proof required; striking from rolls.
222. Pension examiners and examining board.
223. Pay and care when injured or disabled in service.
224. Appeals and rehearing.
225. Reports of county treasurers; bonds for military fund of disbanded organizations.
226. Interest on military fund in the hands of the chamberlain or the several county treasurers of the state.

Enumeration of sections and their running titles in article ten amended to read as above by L. 1921, ch. 587, § 15, in effect May 5, 1921.

ARTICLE XI.

PRIVILEGES, PROHIBITIONS AND PENALTIES.

Section 235. Exemption from civil process.
236. Right of way.
237. Free passage through toll-gates and over toll-bridges and certain ferries.
238. Exemption from jury duty.
239. Unlawful conversion of military property; unlawful wearing of uniforms and devices indicating rank.
240. Trespassers and disturbers to be placed in arrest; liquor and huckster sales prohibited.
241. Military parades by unauthorized bodies prohibited.
242. Separate companies and separate divisions.
243. Amendatory and repealing statutes.
244. Devises and bequests.
245. State and municipal officers and employees absent on military or naval duty.
246. Oaths.
247. Conspicuous service cross.

Enumeration of sections and their running titles in article eleven amended to read as above by L. 1921, ch. 588, § 63, in effect May 5, 1921.

ARTICLE XII.

MISCELLANEOUS PROVISIONS.

Section 250. Joint service on land.
251. Duties by title of office.
252. Formation of association; by-laws.
253. Formation of state association.
254. Rules and regulations.
255. Custom and usage of the United States army and navy.
256-a. Duplicate service medals.
257. Laws repealed.
258. Name of this chapter.
259. When to take effect.

Enumeration of sections and their running titles in article twelve amended to read as above by L. 1917, ch. 644, § 41; L. 1921, ch. 588, § 64, in effect May 5, 1921.

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There are discrepancies between the enumeration of sections and their running titles, as provided for in L. 1917, ch. 644, §§ 35–41, and the numbers and running titles of the sections as they are given in the amendatory sections of the same statute. The same discordance is noticeable in some of the amendments made by L. 1917 and 1918.

Sections renumbered.— L. 1917, ch. 644, § 42, provided as follows:

"(a) Section nine-a added to article one of said chapter by chapter five hundred and sixty-eight of the laws of nineteen hundred and sixteen is hereby renumbered to be section ten and sections ten to twenty-two, both inclusive, of said article are hereby renumbered to be respectively sections eleven to twenty-three, both inclusive.

(b) Section forty as enacted by chapter two hundred and eighty-five of the laws of nineteen hundred and eleven, as amended by chapter three hundred and fifty-eight of the laws of nineteen hundred and fifteen, is hereby renumbered section thirty-two; section forty as enacted by chapter seven hundred and ninety-three of the laws of nineteen hundred and thirteen is hereby renumbered section thirty-three.

(c) Sections eighty-four and eighty-five of said chapter are renumbered to be respectively sections eighty-one and eighty-two.

(d) Sections one hundred and forty-nine, one hundred and fifty-five, one hundred and fifty-six and one hundred and fifty-seven are severally renumbered to be respectively sections one hundred and thirty-eight, one hundred and forty-one, one hundred and forty-two and one hundred and forty-three.

(e) Sections one hundred and seventy and one hundred and seventy-one are severally renumbered to be respectively sections one hundred and sixty-eight and one hundred and sixty-nine.

(f) Sections two hundred and fifty-five, two hundred and fifty-six, two hundred and fifty-seven, two hundred and fifty-eight, two hundred and fifty-nine and two hundred and sixty of said chapter are severally renumbered to be respectively sections two hundred and fifty-four, two hundred and fifty-five, two hundred and fifty-six, two hundred and fifty-seven, two hundred and fifty-eight and two hundred and fifty-nine."

Sections repealed.— L. 1917, ch. 644, § 43, provided as follows:

"§ 43. The following sections of said chapter as amended and in force at the date this act takes effect are hereby repealed, namely: Sections thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty-one, seventy-five, seventy-six, seventy-seven, ninety-six, one hundred and two, one hundred and thirty-two, one hundred and thirty-three, one hundred and thirty-four, one hundred and thirty-five, one hundred and thirty-six, one hundred and thirty-seven, one hundred and thirty-eight, one hundred and thirty-nine, one hundred and forty, one hundred and forty-one, one hundred and forty-three, one hundred and forty-four, one hundred and forty-five, one hundred and forty-seven, one hundred and forty-eight, one hundred and fifty, one hundred and fifty-one, one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-four, one hundred and fifty-seven, one hundred and fifty-eight, one hundred and sixty-seven, one hundred and sixty-eight and two hundred and fifty-four."

Temporary legislation affecting Military Law, and pertaining to detail of men for agricultural work, etc.— L. 1917, ch. 435, § 2, provides as follows:

"§ 2. The adjutant-general shall, whenever in the judgment of the governor public security or national defense requires, and with the consent of the federal war department, assign, detail or temporarily release members of the national guard and naval militia of the state for services or work in the production of agricultural products, the manufacture of munitions and other commodities required for the prosecution of the war and public defense, or for any other service required for public security or defense. This section shall continue in full force and effect until the end of the present war and for a period of two months thereafter."

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ARTICLE 1

THE MILITIA OF THE STATE

Section 5-a. Organizations and volunteers from the reserve militia [New].
16. Adjutant-general to have powers and duties of armory commissions; commissions abolished [New].
17-a. Powers and duties of adjutant-general with respect to a certain monument; former commission therefor abolished [New; repealed].
19-a. Retiring certain veterans and granting them pensions [New].
20-a. [Spanish war refund moneys.] [New].

§ 1. Persons subject to military duty; exemptions. The militia of the state shall consist of all able-bodied male citizens and all other able-bodied males who have or shall have declared their intention to become citizens of the United States, between the ages of eighteen and forty-five, who are residents of the state, and of such other persons as may upon their own application be enlisted or commissioned therein pursuant to the provisions of this chapter, subject, however, to such exemptions as are now or may be hereafter created by the laws of the United States.

Amended by L. 1917, ch. 644, § 1; L. 1921, ch. 588, § 1, in effect May 5, 1921.

Amendment of 1917 substituted new matter in place of former section, and amendment of 1921 substituted above text in place of 1917 amendment.

§ 5. Designation and division of the militia. The militia of the state shall be divided into two parts; the active and the reserve militia; the active militia shall consist of the organized and uniformed military forces known as the national guard, and of the organized and uniformed naval forces known as the naval militia; the reserve militia shall consist of all those liable to service in the militia, but not serving in the national guard or in the naval militia of the state.

Amended by L. 1917, ch. 151, § 1, by omitting last sentence, "The governor . . . deem proper."

§ 5-a. Organizations and volunteers from the reserve militia. The governor may, at any time, order, authorize or recognize such organizations of the reserve militia, or of designated classes thereof, or of volunteers therefrom, as he may deem to be for the public interest, and may prescribe therefor such parts of the regulations governing the active militia as may be applicable thereto or establish special regulations therefor, or both, as he may deem proper. The governor may, at any time, provide for the separate organization, or authorize the service and enrollment in organizations of the reserve militia, of persons volunteering for such service, not otherwise subject to militarv duty, under section one of this chapter.

New. Added by L. 1917, ch. 151, § 2.

Object of section.—The object of this section was to enable the governor to provide for the organization of a state force other than the National Guard and Naval Militia, it being foreseen that the government might call away the National Guard and leave the state in time of war without proper protection against acts of enemies or traitors. Op. Atty-Gen. (1917) 13 St. Dept. Rep. 465.

Organizations as part of National Guard.—Organizations under this section are of course no part of the National Guard, nor technically are organizations of depot battalions and units under section 120 infra, although the statute would seem to indicate, in the case of the last mentioned organizations, that it is expected that their officers, noncommissioned officers and enlisted men will be taken, as far as available, from reserve lists of officers, noncommissioned officers and enlisted men. Op. Atty.-Gen. (1917) 13 St. Dept. Rep. 465.

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Organization of home defense guards.— Under this section the governor has control of the organization of the reserve militia and also of those not subject to military duty who volunteer for service. That this includes the so-called home defense guards is only emphasized by the regulations issued by the governor. These expressly authorize the organization of such bodies under this section of the law and prescribe that applications for authority to organize them must be made to the adjutant-general, in a prescribed form. Matter of Long Beach Defense Guards, (1917) 100 Misc. 584, 166 N. Y. S. 459.

Purchase of uniforms and equipment for home guards.—A home guard organized by a village board of trustees in accordance with directions from the Adjutant General's office is a local military organization within the meaning of L. 1917, ch. 235, and the village may negotiate a loan pursuant to such statute to provide funds for the purpose of purchasing uniforms and equipment for the organization. Op. Compt. (1917) 13 St. Dept. Rep. 479.

§ 6. Commander-in-chief. The governor of the state, by virtue of his office, shall be the commander-in-chief of the militia of the state, except of such portions as may be at times in the service of the United States. When unable to perform his duties as such, except in cases when the lieutenant-governor or president of the senate, or the speaker of the assembly, under the laws of the state would perform them, the commanding general of the national guard shall command the militia of the state. But when the governor shall, with the consent of the legislature, be out of the state, in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the state.

Amended by L. 1921, ch. 588, § 2, in effect May 5, 1921.

§ 7. Staff of the governor. The staff of the governor shall consist of the adjutant-general of the state, one military secretary who shall be detailed by the governor from the commissioned officers of the national guard or naval militia of a grade not above that of major or lieutenant commander, whose title shall be "military secretary of the governor," and not more than eighteen aides of whom sixteen shall be detailed by the governor from the commissioned officers of the national guard or naval militia, and two may be detailed by the governor from officers on the national guard reserve or state reserve list for officers. When any of the officers detailed under this section shall be called into active service of the United States, the vacancy thereby created may be filled in like manner by the governor. Officers detailed under this section shall not be relieved from their ordinary duties, except when actually on duty with the governor. The pay, traveling expenses and subsistence of the military secretary shall be defrayed from the appropriation made by the legislature for the executive department.

Amended by L. 1917, ch. 647; L. 1921, ch. 588, § 3; L. 1924, ch. 114, § 1, in effect April 12, 1924. Many changes.

Eligibility to staff.—A member of the New York City police force is eligible for the Governor's military staff, providing his duties as such do not interfere with his regular activities as an employee of the city. There is considerable doubt as to the availability of a member of the legislature. Op. Atty.-Gen., (1932) 98.

§ 9-a.

This section was renumbered section 10 by L.1917, ch. 644, § 42, in effect May 24, 1917.

§ 10. Drafts or volunteers from the reserve militia into the national guard and naval militia. For the purpose of maintaining the national guard and naval militia at the standard of efficiency required for public safety, or of conforming to any organization now or hereafter adopted for the army of the United States or prescribed by the laws of the United States for the organization of the national guard or naval

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militia, the governor may also, at any time, call for volunteers or order that an enrollment be made of that part of the reserve militia residing in any city or town, and that a draft be made, or volunteers secured therefrom, of such number as may be required to make up or complete the complement of organizations of the national guard or naval militia or any part thereof located therein; the governor in such case, shall direct his order to the mayor of any city, or supervisor of any town, specifying the number required in each case, and upon the receipt of such order, the said mayor or the supervisor, as the case may be, shall proceed forthwith to enroll the reserve militia residing within such city or town and to draft therefrom the number specified, or he may accept as volunteers as many as are required by the governor to make up such quota, and shall forthwith forward to the governor a list of the persons so accepted as volunteers or drafted for such purpose. The names and addresses of all persons so drafted or volunteering, shall be certified by the governor to the commanding officers of the several regiments, battalions, squadrons, troops, companies or other units to which such persons are assigned for service, and the persons so named and certified shall be deemed for all purposes enlisted members of the organization and units of the national guard or naval militia, as the case may be, to which they are assigned, and entitled to all the rights and privileges and subject to all the obligations and duties of enlisted men therein, from and after the date of such certification, except those who may be found to be unacceptable or unqualified for service in the national guard or naval militia. Persons found unacceptable or unqualified for such service shall continue in the reserve militia and be subject to orders or drafts for service, under sections eight, nine and ten of this chapter.

Formerly § 9-a. Renumbered by L.1917, ch. 644, § 42; further amended by L.1924, ch. 114, § 2. Amendment of 1921 changed catchline and amendment of 1924 restored original catchline and affected latter part of section.
Former § 10 renumbered 11 by L.1917, ch. 644, § 42.

§ 11.

Formerly section 10, renumbered section 11 by L.1917, ch. 644, § 42, in effect May 24, 1917. Former section 11 renumbered 12 by same law.

§ 12. Organization of reserve militia when ordered out. The portion of the reserve militia so accepted shall be immediately mustered into the service of the state for the lawful term of enlistment authorized by this chapter, or such less period as the governor may direct, and shall be organized into appropriate units which may be arranged in squadrons, battalions, regiments, or other organizations or assigned to organizations of the active militia already existing. The governor is authorized to appoint the officers necessary to commence or complete any organization thus created. Such new organization shall be equipped, disciplined and governed according to this chapter and the military and naval regulations of the state.

Formerly § 11. Renumbered 12 by L.1917, ch. 644, § 42. Amended by L. 1924, ch. 114, § 3, in effect April 12, 1924. Amendment affected latter part of first sentence.
Former § 12 renumbered 13 by L.1917, ch. 644, § 42.

§ 13.

Formerly section 12, renumbered section 13 by L.1917, ch. 644, § 42, in effect May 24, 1917. Former section 13 renumbered 14 by same law.

§ 14. When articles of war of the United States shall be in force. The articles of war for the government of the armies of the United States and the articles of the government of the United States navy as now or hereafter enacted shall be in force at all times as to the land and naval forces of the state respectively and regarded as a part of this chapter so far as they are consistent with its provisions and with

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the regulations now or hereafter issued thereunder. But no punishment under such rules and articles which shall extend to the taking of life shall, in any case, be inflicted except in time of actual war, invasion, or insurrection, declared by proclamation of the governor to exist, and then only after the approval by the governor of the sentence inflicting such punishment. Imprisonment other than in guard house shall be executed in jails, penitentiaries or prisons designated by the governor or by the adjutant-general of the state for the purpose.

Formerly § 13. Renumbered 14 by L.1917, ch. 644, § 42. Amended by L. 1917, ch. 644, § 2; L. 1924, ch. 114, § 3, in effect April 12, 1924. Many changes.

Former § 14 renumbered 15 by L.1917, ch. 644, § 42.

§ 15. Relief from civil or criminal liability; security for costs. Members of the militia ordered into the active service of the state by any proper authority, shall not be liable civilly or criminally, for any act or acts done by them in the performance of their duty. When an action or proceeding of any nature shall be commenced in any court by any person against any officer of the militia for any act done by such officer in his official capacity in the discharge of any duty under this chapter, or an alleged omission by him to do an act which it was his duty to perform, or against any person acting under the authority or order of any such officer, or by virtue of any warrant issued by him pursuant to law, the defendant may require the person instituting or prosecuting the action or proceeding to file security for the payment of costs that may be awarded to the defendant therein, and the defendant in all cases may make a general denial and give the special matter in evidence. A defendant, in whose favor a final judgment is rendered in an action or a final order is made in a special proceeding, shall recover treble costs.

Formerly § 14. Renumbered 15 by L.1917, ch. 644, § 42. Amended by L. 1921, ch. 588, § 4, in effect May 5, 1921.

Former § 15 was renumbered 16 by L.1917, ch. 644, § 42, and repealed by L. 1921, ch. 588, § 55.

Liability for negligent operation of truck.—Commander of Medical Detachment of National Guard held not liable for personal injuries to plaintiff due to negligent operation, by guard officer of truck used in service of National Guard. Schroedel v. Bullard, (1935) 243 App. Div. 800, 278 N. Y. S. 12.

Torts, liability of state for.—Proposed claims to recover damages from the state for personal injuries, sustained by an infant and for damages sustained by his father arising out of an accident to the infant while he was a member of the State Militia resulting from the alleged negligence of a fellow private member of the Militia, failed to allege a cause of action against the state. Kennedy v. State, 1939, 16 N.Y.S.2d 288.

§ 16. Militia council. [Repealed.]

Formerly § 15. Renumbered 16 by L.1917, ch. 644, § 42. Repealed by L. 1921, ch. 588, § 55, in effect May 5, 1921. Former § 16 renumbered 17 by L.1917, ch. 644, § 42.

§ 16. Adjutant-general to have powers and duties of armory commissions; commissions abolished. The adjutant-general hereafter shall have and exercise all the powers and duties of the armory commissions as defined by this chapter or other statute, and such commissions are hereby abolished. For the purposes of this section, the term armory commission in any provision of statute shall mean the adjutant-general, and any power or duty specified in any such statute to be exercised by any armory commission with the concurrence or approval of the adjutant-general or by the adjutant-general in conjunction with the armory commission, shall hereafter be exercised by the adjutant-general.

New. Added by L. 1924, ch. 289, in effect April 23, 1924. Former § 16 renumbered 17 by L.1917, ch. 644, § 42.

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Section 2 of 1924 amending act provided as follows: "Upon the taking effect of this act, the armory commissions shall deliver to the adjutant-general all the books, papers, records, documents and property of the state in their possession or under their control. The unexpended balances of appropriations heretofore made for the armory commissions shall be available for and be expended by the adjutant-general in carrying out the objects and purposes of the appropriations. The employees of the armory commissions shall be transferred to the office of the adjutant-general and shall be continued in their employment subject to removal and appointment of their successors by the adjutant-general, at salaries to be fixed by appropriation or otherwise by or pursuant to law. Until otherwise provided, they shall receive their present salaries."

§ 17. The adjutant general of the state.

There shall be an adjutant general of the state who shall be appointed by the governor and shall be a commissioned officer in the adjutant general's department of the national guard of this state and shall have the rank of brigadier general. He shall be appointed from among the officers upon the active list holding commissions as general officers in the adjutant general's department in the national guard of this state, unless there is no officer holding such a commission upon the active list of the national guard at the time, in which event he must be at the time of his appointment an officer in the national guard of this state holding a commission in a grade not below that of colonel; provided, however, that an officer appointed to be the adjutant general of the state by the governor and who shall have held the rank of brigadier general in the national guard of this state for a period of five years not less than three of which have been served as the adjutant general of the state, may, in the discretion of the governor, and with the consent of the senate, receive the rank of major general in the adjutant general's department of the national guard of this state. He shall not be removed from office except as provided by military law of this state. He shall perform the duties prescribed for him by law and in the regulations now or hereafter issued thereunder and in the statutes of the United States now or hereafter enacted. He shall direct and supervise the functions and duties of the chiefs of staff departments.

Opening par, amended by L. 1917, ch. 644, § 3; L. 1921, ch. 588, § 5; L. 1924, ch. 114, § 4; L. 1926, ch. 315; L. 1930, ch. 35, in effect Feb. 21, 1930. Many changes.

1. He shall superintend the preparation of all returns and reports required by the United States from the state.

2. He shall keep a register of all the officers of the land and naval forces of the state, and keep in his office all records and papers required to be kept and filed therein, and make a report on or before the thirty-first day of December in each year, to the governor, including a detailed statement of all the expenditures for military and naval purposes during that year.

3. He shall, at the expense of the state, when necessary, cause the military and naval law, the general regulations of the state and articles of war of the United States, to be printed, indexed and bound in proper and compact form and distributed to the commissioned officers, sheriffs, clerks of boards of supervisors and county treasurers of this state at the rate of one copy to each; and to each commissioned officer and headquarters he shall issue one copy of the necessary text books and of such annual reports concerning the militia as the governor may direct.

4. He shall cause to be prepared and issued all necessary blank books, blanks, forms and notices required to carry into full effect the provisions of this chapter. All such books and blanks shall be and remain the property of the state.

5. He shall attend to the safe-keeping and repairing of the ordnance, arms, accoutrements, equipments and all other military and naval property, belonging to the state or issued to it by the United States.

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All military and naval property of the state which after a proper inspection shall be found unsuitable for the use of the state shall under the direction of the governor be disposed of by the adjutant-general of the state at public auction or by inviting bids after suitable advertisement of the sale daily for ten days in at least one newspaper published in the English language in the city or county where the sale is to take place; or the same may be sold at private sale when so ordered by the governor, or may, with the approval of the governor, be turned over to any other department, board or commission of the state government by which it can be used. He shall bid in the property or suspend the sale whenever in his opinion better prices may or should be obtained.

Subd. 5 amended by L. 1920, ch. 626; L. 1921, ch. 588, § 5; L. 1924, ch. 114, § 4; L.1938, ch. 528, § 1, in effect July 1, 1938. Amendment omitted last sentence of former subd.

6. He shall keep a just and true account of all expenses necessarily incurred, including pay of officers and enlisted men, allowances to officers and organizations, pensions and any other moneys required to be disbursed by him and through his office, including subsistence of the militia, transportation of the militia and of all military and naval property of the state or of the United States, and such expenses shall be audited and paid in the same manner as other military and naval accounts are audited and paid.

7. He shall issue such military and naval property as the governor shall direct and under his direction make purchases for that purpose. Except as provided in subdivision thirteen of this section, no military or naval property shall be issued to persons or organizations other than those belonging to the active militia, or to such portions of the reserve militia as may be called out by the governor. Purchases of property not exceeding five hundred dollars in value and purchases from the federal government shall be made in such manner as the adjutant-general of the state shall direct. If such purchase requires an expenditure exceeding five hundred and not exceeding one thousand dollars the adjutant-general of the state shall procure written proposals to furnish such property from at least two parties and shall purchase such property from the lowest responsible bidder. If such purchase shall require the expenditure of a sum exceeding one thousand dollars he shall publicly advertise, for not less than ten days, for sealed proposals for furnishing such property; such proposals shall be publicly opened by the adjutant-general of the state at the place, day and hour designated in such advertisement. The adjutant-general of the state shall, if the governor approve, make contract with the lowest responsible bidder to furnish such property. All proposals and contracts made under the authority hereby conferred shall be filed in the office of the adjutant-general of the state. The adjutant-general of the state is authorized and directed whenever, in his opinion, it shall be to the interest of the state, to require a party who shall agree or contract to furnish such property to give bond to the people of the state in such sum and with such surety as he shall direct, conditioned for the faithful performance of such agreement or contract. In case of default such bond shall be prosecuted by the attorney-general and all moneys recovered shall be applied by the adjutant-general of the state to the use and benefit of the national guard or naval militia. All property, purchased under the authority hereby granted, shall be inspected by an inspector or an officer detailed for that purpose by the commanding general of the national guard or the commanding officer of the naval militia, and no payment shall be made therefor until it shall appear by the certificate of such officer that such property is of the kind and quality specified in such agreement or contract. In case of insurrection, invasion, tumult, riot, breaches of the peace or imminent danger thereof, the governor may, upon the certificate of the commanding general of the national guard or the commanding officer of the naval militia, temporarily suspend

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the operation of this paragraph and direct the adjutant-general of the state to purchase such military and naval property as may be required in open market. He shall report such action with the reasons therefor, and a statement of the property purchased and the prices paid therefor to the legislature at its next session.

Subd. 7 amended by L.1921, c. 588, § 5; L.1924, c. 114, § 4; L.1940, c. 195, § 5, in effect March 19, 1940. Last amendment added "Except as provided in subdivision thirteen of this section" in second sentence and substituted "or" for "except" following word "militia" therein.

8. The adjutant-general of the state upon the approval of the governor may sell to officers of the active militia for their official use and to the organizations or units of the active militia any military or naval property which is an article of issue by the state at its cost price. Such sale shall be for cash or if to an organization or unit the price may be charged to and deducted from its allowances or military fund.

Subd. 8 amended by L.1924, ch. 114, § 4; L.1925, ch. 173; L.1938, ch. 528, § 2, in effect July 1, 1938. Amendment omitted last sentence of former subd.

Laws 1938, ch. 528, § 5, provided as follows:

"§ 5. All moneys which on July first, nineteen hundred thirty-eight, pursuant to sections seventeen and twenty-one of such chapter [this law], are credited to special funds or accounts for the purposes provided in such sections shall be transferred forthwith to the general fund of the treasury."

9. He shall render annually to the governor, a statement in detail showing the disposition of all clothing, ordnance, arms, ammunition and other military or naval property on hand or issued.

10. [Repealed.]

Subd. 10 was repealed by L. 1928, ch. 141, in effect Feb. 25, 1928.

11. The adjutant-general of the state shall be the auditor of all military accounts payable by the state except such as are for expenditures made by him or through his office, which shall be audited by the comptroller. Copies of all orders and contracts relating to expenditures subject to his audit shall be filed in his office.

12. The adjutant-general shall have power to approve the expenditure or disbursement of all moneys appropriated by the state to the Grand Army of the Republic and to the United Spanish War Veterans and no such expenditure or disbursement shall be made without such approval.

Subd. 12 new. Added by L. 1924, ch. 288, in effect April 23, 1924.

13. The adjutant-general is hereby authorized to issue, upon application approved by the governor, to city, village or town authorities, state commissions, state institutions, bodies intrusted with the care and custody of city, village, town or state property, public schools, and educational or eleemosynary corporations supported in whole or in part by state or municipal funds, obsolete ordnance property belonging to the state of New York. In the month of January of each and every year after the delivery of said ordnance property, the city, village or town authorities, or commission to whom such property has been issued will render a statement to the adjutant-general in writing, setting forth that the said ordnance property is being cared for and preserved. Whenever the adjutant-general shall have reason to believe that said ordnance property is not receiving care and protection, or continued in use in accordance with the original application, he may reclaim said ordnance property and thereafter assume the custody and control thereof.

Subd. 13 reenacted as part of this section by L.1940, c. 195, § 4. It was derived from L.1910, c. 71, § 1 (Unconsol.L. § 1936), which was repealed by L.1940, c. 195, § 7, in effect March 19, 1940.

Section was formerly § 16. Renumbered 17 by L.1917, ch. 644, § 42. Former § 17 renumbered 18 by same chapter.

Continuing effect of law; saving clause.

Laws 1940, c. 195, § 6, provided as follows: "§ 6. This chapter shall not be considered a new act, but a reenactment and a continuation of the sev-

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eral acts hereby incorporated in pertinent chapters of the consolidated laws; nor shall this chapter affect or impair any right, power or duty conferred or imposed by any such act or any liability or right incurred or action or proceeding taken thereunder."

Note of Commission.—Amendments by L.1940, c. 195 affecting this section and Canal L. § 121, County L. Art. VII, Gen.Bus.L. Art. XXIV-A and UnconsolL. §§ 276, 1936, 2171–2174, 2201–2205, 3001–3010, were recommended by the Law Revision Commission. "Its purpose is to further public convenience and logical arrangement by incorporating various unconsolidated laws of a general and permanent character in the pertinent chapters of the consolidated laws. * * * No changes have been made in existing law."

"This [amendment of subd. 7] is a conformity change." 1940 Leg.Doc.No. 65(J); 1940, Report, Recommendations and Studies, pp. 445, 446.

§ 17-a. Powers and duties of adjutant-general with respect to a certain monument; former commission therefor abolished. [Repealed.]

This section as added by L. 1923, ch. 464, § 1, was repealed by L. 1932, ch. 272, § 7, in effect March 18, 1932.

§ 18. [Repealed.]

This section, formerly 17 as renumbered 18 by L.1917, ch. 644, § 42, was repealed by L.1938, ch. 528, § 3, in effect July 1, 1938.

§ 19. The adjutant-general of the state, his pay, assistants and employees. The adjutant-general of the state shall have such assistants, and such clerks, employees and laborers as may be necessary from time to time who shall be appointed and shall be removed by him at its discretion, and any officer, who is such an assistant, may be rendered supernumerary by the governor at any time. He may by a writing filed in his office designate any one of his assistants to act as the adjutant-general of the state in the absence of the latter from the capital city of the state or in case of his inability to perform the duties of his office. An assistant, at the time of his appointment must either be an officer in active service in the national guard or naval militia of this state, and for three successive years immediately preceding his appointment he must have been in active service in said national guard or naval militia as a commissioned officer; or if not in active service at the time of appointment he must have had prior service of at least six years in the national guard or naval militia of this state or in the army or navy of the United States, or in all combined, as a commissioned officer. There shall be allowed to the adjutant-general of the state for his salary eight thousand five hundred dollars annually. Necessary traveling expenses and subsistence of the adjutant-general of the state and his assistants when traveling on duty and under orders as well as the office expenses, clerical services and labor will also be allowed. The adjutant-general of the state may require his assistants or any of them to give bonds with sufficient surety in an amount to be determinated by him but not less than fifteen thousand dollars to the people of the state conditioned for the faithful discharge of their duties and promptly account for and pay over all moneys or property received by them as such officers in accordance with law, to be executed, approved and filed in the form and manner provided in the public officer's law. The assistants, clerks, employees and laborers provided for by this section shall be considered as being in the military service of the state and shall be subject to military discipline.

Formerly § 18. Amended by L. 1917, ch. 644, § 4; renumbered 19 by ch. 644, § 42; further amended by L.1921, ch. 588, § 6; L.1924, ch. 114, § 4; L. 1928, ch. 310, in effect March 9, 1928. Many changes.

Former § 19 renumbered 20 by L.1917, ch. 644, § 42.

§ 19-a. Retiring certain veterans and granting them pensions. Any soldier, sailor or marine of the army or navy of the United States in the Civil war, Spanish-American war, or World war, honorably discharged from service, and any member of the organized militia of the state having performed active service as such with his organization in aid of

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federal or civil authorities, for a period of not less than ten consecutive days, who shall have been employed for a period of twenty years or more in the military or naval service of the state of New York under pay from funds, raised as provided for in this chapter for the pay of such employees, may, upon reaching the age of sixty-four years upon his own request and the approval of the adjutant-general of the state, or shall, upon being discharged or released from such employment without fault on his part after reaching the age of fifty years after serving as aforesaid, or upon being incapacitated for performing the duties of his position after twenty years of such service, be retired from such employment with the approval of the adjutant-general, and thereafter during his life there shall be paid to him, in the same manner and by the same agency and from the same source that the compensation of his former position was customarily paid to him, an annual sum equal in amount to one-half of the compensation paid to him in the last year of his employment.

New. Added by L. 1918, ch. 557. Amended by L. 1920, ch. 843; L. 1921, ch. 588, § 7; L. 1924, ch. 114, § 5; L. 1927, ch. 705, § 1; L. 1932, ch. 272, § 1, in effect March 18, 1932. Many changes.

Membership in state employees' retirement system, see McKinney's Unconsolidated Law, § 711.

Ten years' service as prerequisite to retirement of civil war veteran.—To be entitled to retirement a civil war veteran must have been employed for a continuous period of ten years or more in the office of the adjutant general of the state of New York. (1921) Op. Atty.-Gen. 260.

Female employee as subject to retirement.—A female armory employee at a Naval Militia armory may be retired after medical examination under this section. Op. Atty.-Gen., (1932) 45 St. Dept. 266.

Not applicable where employee has retired under employees' retirement system.—See Op. Atty.-Gen., (1925) 35 St. Dept. 189.

Computation of compensation.—Retirement compensation under this section should be computed upon the employee's regular salary. 1937, Op.Atty.Gen. 108.

Pension under section 220.—A person receiving a pension under this section is not entitled to receive another pension under section 220 at the same time. 1939, Op.Atty.Gen. 130.

§ 20. Bureau of war records;[1] completion and preservation of the records and relics; free inspection of the same and quarters in the capitol. 1. The adjutant-general of the state shall establish and maintain as part of his office, a bureau of *war* records,[1] in which all records in his office relating to [2] *the* wars *in which the state participated,* and relics shall be kept. He shall be the custodian of all such records, relics, colors, standards and battle flags of New York [3] *troops* now the property of the state or in its possession, or which the state may hereafter acquire or become possessed of, and he shall appoint a chief of this bureau, who shall hold office under his direction for six years.

Subd. 1 amended by L. 1919, ch. 75. Matter in italics new. Omissions: [1] "of the war of the rebellion." [2] "such" [3] "volunteers."

2. The adjutant-general of the state by all reasonable ways and means, shall complete such records and gather from every available source such colors, standards and battle flags as were borne by New York state troops in the wars [1] *in which the state participated,* and such statistics and historical information and relics as may serve to perpetuate the memory and heroic deeds of the soldiers of the state, and keep and carefully preserve the same in such bureau.

Subd. 2 amended by L. 1919, ch. 75. Matter in italics new. Omission: [1] "of the rebellion."

3. He is authorized to request and accept from incorporated associations of veterans of the different regiments, statements and information duly authenticated by them, descriptive of their colors, standards and battle flags, together with the number and class of arms of the regiment, the date and place of muster into the service of the state and also into the service of the United States, the period of service, and the date and

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place of muster-out, the date of departure for the seat of war, and the various battles and engagements and places of service, including garrison duty, the time of joining brigades, corps and armies, with the time and nature of the service, and the names of colonels of such regiments, the names of those killed in action, including those who died of wounds, and the names of those who died of disease during their period of service. He is further authorized to ask the co-operation and assistance of the adjutant-general of the United States, and of the city, county and town authorities and officials, and of the Grand Army of the Republic, the Military Order of the Loyal Legion, the United Spanish War Veterans, the American Legion, the Veterans of Foreign Wars, the Jewish War Veterans of the United States, Inc., the Catholic War Veterans, Inc., the Italian American World War Veterans of the United States, Inc., the Polish Legion of American Veterans, Inc., and of other organizations and persons in the state of New York and elsewhere in the collection of such other information, relics, memorials and battle flags as is contemplated by this article, in order to make as complete as possible the records, history and statistics of the patriotic service of the soldiers of the state during the wars in which the state participated.

Subd. 3 amended by L. 1919, c. 75; L.1924, c. 114, § 6; L.1935, c. 789, § 1; L.1936, c. 197, § 1; L.1941, c. 262, § 1, eff. April 11, 1941; L.1942, c. 793, § 1, eff. May 11, 1942. Amendment by L.1941 inserted "the Italian American World War Veterans of the United States, Inc., the Polish Legion of American Veterans, Inc." L.1942 purported to amend the subdivision but reenacted same without change.

6. The books, records and other property and relics deposited in such bureau shall be open to inspection and use, except the use of the colors, standards and battle flags, at such reasonable hours and under such regulations as the adjutant-general of the state may determine. No battle flag, book or any property placed in such bureau for the purpose of this article, shall be removed therefrom, or from the immediate custody and control of the adjutant-general of the state without an act of the legislature, provided that colors, standards, battle flags and guidons received from the war department may be turned over by the adjutant-general, with the approval of the governor, under such regulations as he may provide, to active organizations of the national guard representing the organizations which carried such colors, standards, battle flags and guidons in time of war.

Subd. 6 amended by L. 1924, ch. 114, § 6, in effect April 12, 1924, by adding above provision at end of subdivision.

7. The superintendent of public works is authorized and directed to provide suitable and convenient quarters in the capitol for the bureau of war records whenever the adjutant-general of the state shall require and make demand therefor, and to properly fit up and prepare the same for the safe-keeping of such records, books and property, and for the display of such colors, standards, battle flags and relics which shall be known and maintained as the hall of military records. The several municipalities of the state may deposit their record books and papers relating to the wars in which the state participated in the archives of the hall for safe-keeping, and transcripts therefrom shall be furnished on application by the chief officer of the municipality without cost to it. Officers or soldiers may deposit therein their discharge papers, descriptive lists, muster rolls or company or regimental books and papers for safe-keeping.

The interest arising from the investment of the funds contributed by towns, cities and individuals for the erection of a hall of military records shall be devoted to the maintenance of the hall of military records provided in this section.

Subd. 7 amended by L.1919, cc. 75, 180; L.1928, c. 207, eff. March 1, 1928; L.1942, c. 555, § 2, eff. July 1, 1942. L.1942 omitted provisions on the disposition of Spanish war refund moneys now covered by section 20-a.

Section formerly § 19. Renumbered 20 by L.1917, ch. 644, § 42. Former § 20 renumbered 21 by same chapter.

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§ 20-a. [Spanish war refund moneys.[1]]

All moneys turned over by the United States government to the state of New York for payment to volunteers of the Spanish-American war, and known as the Spanish war refund, which remain undistributed, shall be paid over to the state comptroller except for the sum of two hundred fifty dollars which shall be used to pay claimants who have presented satisfactory proof to the adjutant-general that they are entitled to a payment from the Spanish war refund.

Upon payment of any Spanish war refund moneys to the comptroller, the state shall be responsible for the safety of such moneys and shall hold itself responsible for the payment of all satisfactorily proven claims thereto, which cannot be paid from such sum of two hundred fifty dollars. Added L.1942, c. 555, § 1, eff. July 1, 1942.

[1] Section was enacted without a catchline which has been supplied by editor.

Payment into state treasury. L.1942, c. 555, § 3, provides: "Upon the receipt of any moneys from the Spanish war refund by the comptroller, pursuant to section twenty-a of the military law, he shall pay forthwith all such moneys into the state treasury to the credit of the post-war planning and capital reserve fund."

§ 21. Arsenal, armory or other quarters of the militia. 1. Whenever any arsenal, armory or other quarters of the militia, camp ground or rifle-range is owned or leased by the state or by the United States for the use of the organized militia of the state, the same shall be under the charge of the adjutant-general, except as otherwise herein provided. The adjutant-general is hereby authorized to appoint and at his pleasure remove a secretary, inspectors and such other employees as may be necessary and fix their compensation, and such persons so employed shall act for him. The office, traveling and other expenses of the adjutant-general and employees herein provided for and the compensation of such employees shall be a charge against the appropriations which annually shall be made by the legislature for the repairs and improvements and betterments of the state arsenals, armories, camp grounds and rifle-ranges and for necessary office and traveling expenses provided for in this chapter. The secretary, inspectors and other employees appointed under this section shall be considered as being in the military service of the state and shall be subject to military discipline.

2. The adjutant-general shall keep in good repair the arsenals, armories, quarters, camp grounds and rifle-ranges in his charge, and all moneys appropriated for the erection, repair, alteration, enlarging or equipment of such buildings, grounds and ranges shall be expended by the adjutant-general in the same manner as other moneys appropriated for military or naval purposes are authorized to be expended.

3. The superintendent of public works through the division of architecture in the department of public works shall perform such services as may be required by the adjutant-general.

4. The adjutant-general may establish and conduct post exchanges and places of amusement, entertainment and recreation for the use of troops occupying camp grounds and rifle-ranges or he may enter into contracts with responsible parties for establishing and conducting same. He may also sell ice, wood, sand, gravel and other products of camp grounds and rifle-ranges and enter into contracts for the sale thereof, provided that the sale and removal of same does not injure such camp grounds or rifle-ranges or interfere with their use.

5. When expenditures not exceeding one hundred dollars are necessary, the officer in charge of the building or grounds shall report to the adjutant-general what is required to be done, submitting estimates from at least two responsible parties, and the adjutant-general may authorize the officer to cause the work to be done, designating the party who shall do the work. When expenditures which will amount to more than one hundred but not more than five hundred dollars are required, a full statement of the necessity thereof must be made by the officer in charge

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to the adjutant-general, who shall cause estimates of the cost of the work to be prepared by two or more parties, have them examined by an architect or inspector employed by him and then cause the work to be done under a contract entered into by him for that purpose. When expenditures are to be made which will exceed five hundred dollars, the adjutant-general shall advertise for proposals, bids shall be received, and contracts regularly entered into, except in case of an emergency, where the property of the state would be further damaged by any delay, the adjutant-general, with the approval of the state comptroller may cause the repairs to be made by a responsible person or contractor without competition.

6. During and upon the completion of the work, the expenditure for which will exceed five hundred dollars, it shall be inspected from time to time by an inspector employed by the adjutant-general, and payment shall not be made until it appears by the certificate of such inspector that such work has been properly performed and according to the provisions of the contract. Expenditures which do not exceed five hundred dollars shall only be made upon a like certificate of the inspector or of the officer in charge of the building or grounds where the work is performed.

7. Copies of all contracts and agreements made for material or work in connection with arsenals, armories, quarters, camp grounds or rifle-ranges of the state shall immediately be filed in the office of the comptroller of the state, who shall be auditor of the accounts of the adjutant-general herein provided for.

8. Whenever any real property, except in the city of New York, is taken for the purpose of erecting a state armory thereon, the buildings on such property or the old materials in the same, may be sold by the adjutant-general at public or private sale, for the best price that can be obtained, and if the property is taken by the state the net sum realized therefrom shall be paid into the general fund of the treasury, and if taken by a county, to the county treasurer of such county for the use of the county.

9. When real property shall be required for the purpose of a state camping ground, or for rifle practice, or other military or naval purposes deemed necessary by the adjutant-general, and he is unable to agree with the owners for the purchase thereof, title thereto shall be acquired by the attorney-general in the name of the people of the state by condemnation, on the written application of the adjutant-general. The cost of all real property so taken, and damages and expenses incurred, by and awarded in any proceedings for the condemnation of any such property, shall be paid by the state.

10. All camp grounds and ranges owned or leased by the state or by the United States for the use of the national guard and all activities thereon shall be under the charge and control of the commanding general of the national guard, notwithstanding any other provision of this chapter and he shall be responsible to the governor for the proper expenditure of all moneys heretofore or hereafter appropriated therefor and for the keeping of such grounds and ranges in good repair and condition. Formerly § 20, renumbered § 21, L.1917, c. 644, § 42, amended L.1921, c. 588, § 8; L.1924, c. 114, § 7; L.1928, c. 568, § 1; L.1934, c. 836; L.1938, c. 528, § 4; L.1940, c. 532, eff. April 15, 1940.

Subd. 10 amended by L.1940, c. 532 in effect April 15, 1940. Amendment substituted "commanding general of the national guard" for "senior general officer of the line in active service."

Former section 21 renumbered 22 by L.1917, c. 644.

Necessity of advertising for proposals.—In an individual instance, under particular circumstances showing the existence of an acute emergency, the requirement for advertising for proposals under this section may be waived by the State Comptroller. Op. Atty. Gen. (1933) 241.

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§ 22. Legal adviser of the commander-in-chief. The attorney-general of the state shall be the legal adviser of the governor[1] *and* of the adjutant-general of the state.[2]

Formerly § 21. Renumbered § 22 by L.1917, ch. 644, § 42. Amended by L. 1928, ch. 840, § 1, in effect April 6, 1928. Matter in italics new. Omissions: [1] comma. [2] ", and of the armory commission."

Former § 22 renumbered 23 by L.1917, ch. 644, § 42.

§ 23. Audit and payment of accounts.

Formerly § 22. Renumbered 23 by L.1917, ch. 644, § 42.

ARTICLE 1-A

Bureau for Relief of Sick and Disabled New York Veterans

Section 24. Organization.
24-a. Relief commissioners.
24-b. Regulations.
24-c. Offices.
24-d. Applications for relief.
24-dd. Applications for relief of veterans of world war number two [New].
24-e. Additional papers to be filed.
24-f. Examination; determination; payments.
24-g. Penalty for false statement.

New article. Added by L. 1928, ch. 605, § 1, in effect March 26, 1928.

This article embodies in part § 44 of State Departments Law which was repealed by § 2 of this chapter, and ch. 326 of L. 1923 enacted as an unconsolidated law which was also repealed by the same section.

Section 2 provides: "but the repeal of such laws and the enactment of the provisions thereof in the military law by this act shall not operate to invalidate, impair or otherwise affect any annuity or relief heretofore granted under a provision of law repealed by this act or to create new powers in the adjutant-general or the division of military and naval affairs in the executive department in the administration of the provisions of law repealed and enacted in the military law by this act, it being the purpose and intent of this act that such repeal and re-enactment shall be deemed to constitute a continuance of such powers, annuity and relief."

Former article 1-A, comprising §§ 26–29d, as amended by L. 1917, c. 49; L. 1918, c. 470; L. 1919, c. 407, was repealed by L. 1921, ch. 211, § 1. Section 4 of this act provided: "The military training commission is hereby abolished. The powers and duties of the major general, commanding the national guard, with respect to matters referred to in article one-a of the military law, shall terminate, and the terms of office of the appointive members of the military training commission shall expire, when this act takes effect. The adjutant-general shall take charge of all property in the possession of the commission. Books, papers, records and documents of the commission not required for military purposes will be turned over by the adjutant-general to the director of the state library and all other property of the commission not required for military purposes will be turned over by the adjutant-general to the trustees of public buildings."

Section 3 of chapter 605 of L. 1928 which added present article 1-A purports to amend former article 1-A by renumbering it article 1-D.

Decisions Construing Former Article.

Federal employees.— See Op. Atty.-Gen. (1920) 23 St. Dept. Rep. 42.
Tribal Indian boys.— See Op. Atty.-Gen. (1919) 18 St. Dept. Rep. 471.
Alien boys.— See Op. Atty.-Gen. (1919) 21 St. Dept. Rep. 575.
Violation of section as misdemeanor.— See Op. Atty.-Gen. (1920) 23 St. Dept. Rep. 706.

§ 24. Organization. There shall continue to be in the division of military and naval affairs of the executive department a bureau, to be known as "the bureau for the relief of sick and disabled New York veterans." Such bureau shall exercise the powers and perform the duties

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now prescribed by law, under the supervision of the adjutant-general and subject to the direction and control of the governor. The adjutant-general, with the approval of the governor, may appoint such employees in such bureau as he may deem necessary, prescribe their powers and duties and fix their salaries within the limits appropriated therefor by the legislature, provided, however, that in the appointment of employees preference shall be given to persons who served honorably, in the army, navy or marine corps of the United States at any time between the sixth day of April, nineteen hundred and seventeen, and the eleventh day of November, nineteen hundred and eighteen and who at the time of their entry into such service were residents of the state of New York. The adjutant-general shall perform the duties specified in this article without additional compensation, but shall be allowed his actual and necessary traveling or other expenses incurred in the performance of his official duties in carrying out the provisions of this article.

New. Added by L. 1928, ch. 605, § 1, in effect March 26, 1928.

§ 24-a. Relief commissioners. The adjutant-general, with the approval of the governor, shall appoint, and may at pleasure remove, one veterans' relief commissioner in each assembly district, who shall reside in such district. Each veterans' relief commissioner, before entering upon the duties of his office, shall take the constitutional oath of office and file with the comptroller an undertaking, in an amount to be fixed by the adjutant-general and to be approved by the attorney-general as to its form and manner of execution and by the comptroller as to the sufficiency of the sureties, for the faithful discharge of his duties as such commissioner and for the safe-keeping and lawful distribution of any moneys that come into his hands pursuant to the provisions of this article. Each such veterans' relief commissioner shall investigate all applications for relief under this article, within the territorial jurisdiction of the assembly district which he represents, and shall determine the amount of relief within the limits herein prescribed, to be extended to each applicant therefor. Veterans' relief commissioners shall serve without pay, but shall be allowed their actual and necessary traveling and other expenses incurred by them in the performance of their official duties. In the event of a vacancy in the position of veterans' relief commissioner in any assembly district, or in the absence of such commissioner, the adjutant-general, with the approval of the governor, may designate any other veterans' relief commissioner or such other person as he desires to act with full power and authority of a veterans' relief commissioner until said vacancy shall have been filled or until the return of such absent commissioner.

New. Added by L. 1928, ch. 605, § 1, in effect March 26, 1928.

Bonds of commissioners.—The amendment of Article V, section 1, of the Constitution, under which the comptroller is given broad powers and subjects State finances to his minute scrutiny, does not relieve relief commissioners from continuing bonds required by this section, since under this article, they still have certain duties pertaining to the payment of State funds and the comptroller relies upon their investigations and recommendations. 1939, Op.Atty.Gen. 129.

§ 24-b. Regulations. The expenses of the adjutant-general, including salaries of employees and expenses of members, employees and veterans' relief commissioners shall be paid from the treasury on the audit and warrant of the comptroller on the order of the adjutant-general out of any money appropriated for carrying out the provisions of this article. The adjutant-general, with the approval of the governor, shall from time to time adopt such rules and regulations as he may deem necessary, not inconsistent with law, for the distribution of such relief, and for the conduct and administration of the duties and affairs of such bureau, and for such purpose may designate within the bureau persons who shall have power to hear appeals, make investigations, subpoena witnesses and administer oaths. The adjutant-general from time to time, shall deposit

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with each veterans' relief commissioner a sum of money, in an amount which he shall deem sufficient, from which such veterans' relief commissioner shall extend immediate relief in cash, in the amounts hereinafter specified, to all persons applying therefor who qualify for such relief under the conditions hereinafter imposed. For such purpose, the state comptroller shall draw his warrants, to the order of the adjutant-general, for such amounts as may be certified from time to time by the adjutant-general. The adjutant-general, with the approval of the governor, shall make rules and regulations for the audit of all amounts expended by the local commissioners for the relief of any such veteran, and require reports from such commissioners at stated intervals showing the amounts audited and paid and such other matters as the adjutant-general may require.

New. Added by L. 1928, ch. 605, § 1, in effect March 26, 1928.

§ 24-c. Offices. The superintendent of public works shall, upon demand, supply suitable and convenient offices and quarters for the bureau for the relief of sick and disabled New York veterans.

New. Added by L. 1928, ch. 605, § 1, in effect March 26, 1928.

§ 24-d. Applications for relief. Every veteran of the military or naval service of the United States, except those dishonorably discharged, discharged without honor or discharged for the good of the service, actually residing in the state of New York on the second day of May, nineteen hundred and twenty-three, and at the time of making the application hereinafter provided, who was in such service at least sixty days between the sixth day of April, nineteen hundred and seventeen, and the eleventh day of November, nineteen hundred and eighteen, inclusive, may file with the veterans' relief commissioner of the assembly district in which he resides his verified petition, upon a blank to be provided by the adjutant-general and delivered upon request by such commissioner, showing 1. That he was in such service at least sixty days within the times above specified.

2. That he is suffering from a sickness or disability of at least ten per centum, specifying it, incurred between the sixth day of April, nineteen hundred and seventeen, and the eleventh day of November, nineteen hundred and eighteen, or the date of his first discharge subsequent thereto, or as a result thereof and is actually incapacitated by reason thereof from procuring regular employment.

3. That at the time of making the application, he has been out of regular employment for a period of fourteen days next preceding.

4. The amount of compensation, vocational training allowance or other financial aid, if any, which the applicant is receiving per month from the United States government or from any other source.

5. That at the time of making application he is actually in need of such assistance.

New section. Added by L. 1928, ch. 605, § 1, in effect March 26, 1928.

§ 24-dd. Applications for relief of veterans of world war number two Every veteran of the military service of the United States, except those with a discharge certificate other than honorable, actually residing in the state of New York on the first day of July, nineteen hundred forty, and at the time of making the application hereinafter provided, who has served in military service at least sixty days between the first day of July, nineteen hundred forty, and the thirty-first day of March, nineteen hundred forty-four, inclusive, may file with the veterans' relief commissioner of the assembly district in which he resides his verified petition, upon a blank to be provided by the adjutant-general and delivered upon request by such commissioner, showing

1. That he was in such military service at least sixty days within the times above specified.

2. That he is suffering from a sickness or disability of at least ten per centum, specifying it, incurred between the first day of July, nine-

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teen hundred forty and the thirty-first day of March, nineteen hundred forty-four, or the date of his first discharge subsequent thereto, or as a result thereof and is actually incapacitated by reason thereof from procuring regular employment.

3. That at the time of making the application, he has been out of regular employment for a period of fourteen days next preceding.

4. The amount of compensation, vocational training allowance or other financial aid, if any, which the applicant is receiving per month from the United States government or from any other source.

5. That at the time of making application he is actually in need of such assistance.

6. The term "military service" as used in this section shall mean military duty as defined in section two hundred forty-six of the military law. Added L.1943, c. 327, § 1, eff. April 6, 1943.

Rehabilitation of veterans of World War II, see 38 U.S.C.A. ch. 12, Vet. Reg. No. 1(a), pt. VII.

§ 24-e. Additional papers to be filed

With his application, each applicant also shall file with the veterans' relief commissioner his discharge, or certified copy thereof, together with proof by affidavit, satisfactory to the commissioner, executed by a duly licensed physician, a resident of the assembly district in which such veterans' relief commissioner has jurisdiction or such other physician as the adjutant-general may designate, showing in detail the sickness or disability of the applicant the percentage of such disability and to what extent the applicant is actually incapacitated thereby from procuring regular employment, and his reasons for believing it to be a sickness or disability incurred in, or resulting from, the military or naval service of the United States. Each application shall also be accompanied by an affidavit, on a form to be prescribed by the adjutant-general, from the commander of a post of the American Legion or Veterans of Foreign Wars or Jewish War Veterans of the United States, Inc., the Catholic War Veterans, Inc., the Italian American World War Veterans of the United States, Inc., the Polish Legion of American Veterans, Inc., the Army and Navy Union of the United States of America, or of incorporated associations of veterans of the different regiments or units of the national guard and naval militia of the state of New York, or chapter of the Disabled American Veterans of the World War to be designated by the veterans' relief commissioner, to the effect that the affiant has examined and investigated such application and believes the applicant to be within the provisions of this article. The adjutant-general, by rule or regulation, may provide for additional proof from time to time, as to the amount, if any, which the applicant is then receiving from the United States government. Added L.1928, c. 605, § 1; amended L. 1933, c. 655; L.1935, c. 789, § 2; L.1936, c. 197, § 2; L.1941, c. 262, § 2; L.1942, c. 793, § 2; L.1943, c. 264, eff. April 3, 1943.

L.1935, c. 789, inserted "or Jewish War Veterans of the United States, Inc."

L.1936, c. 197, inserted "the Catholic War Veterans, Inc."

L.1941, c. 262, § 2, eff. April 11, 1941, inserted "the Italian American World War Veterans of the United States, Inc., the Polish Legion of American Veterans, Inc."

L.1942, c. 793, § 2, eff. May 11, 1942, inserted "or of incorporated * * * state of New York" in second sentence.

L.1943, c. 264, eff. April 3, 1943, inserted "the Army and Navy Union of the United States of America".

§ 24-f. Examination; determination; payments. The veterans' relief commissioner shall examine without any delay each application filed with him and for that purpose may subpoena witnesses and compel their attendance. He may administer oaths and make such further investigation as to him may seem necessary, and upon the conclusion of his investigation he shall make such determination as justice requires. Each veteran whose claim is allowed by the veterans' relief commissioner, shall receive,

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in the case of a person without dependents, the sum of thirty dollars per month, and in the case of a person having dependents, the additional sum of ten dollars per month for a dependent wife or widowed mother and five dollars per month for each other dependent, the total amount allowed for dependency in no case to exceed thirty dollars per month, provided, however, that in any month that such applicant is receiving aid from the United States government aggregating thirty or more dollars per month in the case of a person without dependents, or aggregating the total amount allowed per month, in the case of a person having dependents, he shall receive nothing under this article, and that in any month that he is receiving from the United States government less than thirty dollars, in the case of a person without dependents, or aggregating less than the total amount, allowed herein per month, in the case of a person having dependents, the difference only between the amount paid by the United States government and the amount herein allowable per month, shall be paid to such applicant, and provided further, that the total payments under this article to any one such applicant shall not exceed in the aggregate the sum of two hundred and fifty dollars.[1] In the event that a veteran entitled to receive aid under this article shall be maintained at a hospital, other than at his own expense, his dependents shall receive the dependent allowance herein provided. Whenever in the opinion of the veterans' relief commissioner it is deemed best, the excess allowance for dependents may be paid directly to such dependents. For the purposes of this article, wives, children and widowed mothers with whom the veteran is living are presumed to be dependents; but the adjutant-general, with the approval of the governor, shall have the right to prescribe rules to determine dependency of others than those mentioned. After the audit of any such claim and before or after payments shall have begun, the veterans' relief commissioner, after a hearing upon notice to the veteran, may revoke such audit, on the ground that the application or any accompanying affidavit, contained a material false statement, and in case such revocation no further payments shall be made to the veteran affected thereby, and the state may recover the amount paid, if any, in an action brought by the attorney-general. An applicant whose claim is rejected by a commissioner, or who is not satisfied with the amount allowed, may appeal to the adjutant-general, who shall then have power, subject to the approval of the governor, to determine the matter and to fix the amount, if any, to be paid.

New. Added by L. 1928, ch. 605, § 1. Amended by L. 1931, ch. 708, § 1, in effect April 24, 1931. Amendment struck out [1] ", except in those cases deemed by the adjutant-general as especially needy and in those cases the aggregate to any one applicant shall not exceed the sum of five hundred dollars."

§ 24-g. Penalty for false statement. Whoever intentionally makes a false statement, oral or written, concerning or affecting a claim under the provisions of this article shall be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment. Offenses under this article may be prosecuted by the attorney-general, or under his direction, and all fines collected thereunder shall be paid to the adjutant-general to be placed to the credit of the bureau for the relief of sick and disabled New York veterans and be used for payment to veterans under this article.

New. Added by L. 1928, ch. 605, § 1, in effect March 26, 1928.

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ARTICLE 1-B

Annuity to Veterans Permanently and Totally Disabled by Reason of Loss of Sight

Section 24-m. Creation of annuity.
24-n. Evidence of service and disability.
24-o. Persons who may receive annuity.

New article. Added by L. 1928, ch. 605, § 1, in effect March 26, 1928. This article is a re-enactment in substance of ch. 559 of L. 1924 enacted as an unconsolidated law and repealed by § 2 of the 1928 act.

§ 24-m. Creation of annuity

Any soldier as defined in this article, who served in the military or naval forces of the United States during any war, the Philippine insurrection, or the China relief expedition, between April twenty-first, eighteen hundred ninety-eight and July fourth, nineteen hundred two and who has been permanently and totally disabled by reason of loss of sight, and who is not receiving or not entitled to receive a benefit from any existing retirement system to which the state is a contributor, shall be paid out of the treasury of this state for the term of his life, the sum of five hundred dollars annually as herein provided. Except that if any soldier, as defined in this article, while engaged in employment entitling him to receive a benefit from any existing retirement system to which the state is a contributor, shall become totally and permanently disabled by reason of loss of sight, and as a result of such disability retires from his employment, and is receiving or is entitled to receive a benefit from any retirement system to which the state is a contributor, he shall be paid out of the treasury of the state for the term of his life, the sum of five hundred dollars annually as herein provided.

The widow, who has not remarried, of a soldier who heretofore has died or the widow of a soldier dying hereafter, such soldier being at the time of death a recipient of the benefits above provided, shall also be paid out of the treasury of this state the sum of five hundred dollars annually during her life or until her re-marriage, beginning, in the case of a person who now is such widow, when this section as hereby amended takes effect, and otherwise at such soldier's death; but the provisions of this section shall not apply to any widow of such soldier who marries or was married to such soldier subsequent to March fourteenth, nineteen hundred thirty-six. Added L.1928, c. 605, § 1; amended L.1929, c. 583; L.1930, c. 118, § 1; L.1931, c. 529, § 1; L.1936, c. 102; L.1937, c. 274; L.1941, c. 834, § 1, eff. April 28, 1941.

L.1941, c. 834, § 1, eff. April 28, 1941 added last sentence to first paragraph.

§ 24-n. Evidence of service and disability

The evidence of such service and of such disability in each case shall be furnished to the adjutant-general, who shall examine the same, and upon being satisfied that such service was performed and that the said person has been rendered permanently and totally disabled by reason of loss of sight, where such person is not receiving or not entitled to receive a benefit from any existing retirement system to which the state is a contributor, unless such person shall have become totally and permanently disabled by reason of loss of sight, while engaged in employment entitling him to receive a benefit from any existing retirement system to which the state is a contributor, and as a result of such disability, he has retired from his employment and is receiving or is entitled to receive a benefit from such retirement system, he shall certify to the state comptroller the name and address of such soldier. Thereafter the department of taxation and finance through the division of finance, on the audit and warrant of the comptroller, shall pay such

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soldier such sum in monthly installments during the lifetime of such soldier. Added L.1928, c. 605, § 1; amended L.1929, c. 583; L.1941, c. 834, § 2, eff. April 28, 1941.

L.1941, c. 834, § 2, eff. April 28, 1941 added words "unless such person . . . . such retirement system" to first sentence.

§ 24-o. Persons who may receive annuity. The word "soldier," as used in this article, shall be taken to mean and include any officer, soldier, sailor, marine, nurse, or any other person regularly enlisted or inducted, who was in or is a part of the military forces of the United States, in [1]*any* war, *the Philippine insurrection, or the China relief expedition, between April twenty-first, eighteen hundred ninety-eight and July fourth, nineteen hundred two,* and who was a resident of the state of New York at the time he was commissioned, enlisted, inducted, appointed, or mustered into the military or naval service of the United States, and who has been or may be given an honorable or ordinary discharge or any other form of release from such service, except a dishonorable discharge, a discharge without honor or a discharge for the good of the service.

New section. Added by L. 1928, ch. 605, § 1. Amended by L. 1930, ch. 118, § 2; L. 1931, ch. 529, § 2, in effect April 21, 1931. Amendments inserted matter in italics and omitted: [1] "the world."

ARTICLE 1-C

State Camp for Veterans

§§ 25–25-f. [Repealed.]

This article as added by L. 1928, ch. 605, § 1, in effect March 26, 1928, was repealed by L. 1934, ch. 55, in effect March 14, 1934. The regulations and control of the "State Camp for Veterans" formerly known as the "New York State Soldiers' Home at Bath" was formerly governed by article 5 of the Public Buildings Law which was repealed by § 2 of 1928 act.

Section 2 of 1928 act provides: "but the repeal of such laws and the enactment of the provisions thereof in the military law by this act shall not operate to invalidate, impair or otherwise affect any annuity or relief heretofore granted under a provision of law repealed by this act or to create new powers in the adjutant-general or the division of military and naval affairs in the executive department in the administration of the provisions of law repealed and enacted in the military law by this act, it being the purpose and intent of this act that such repeal and re-enactment shall be deemed to constitute a continuance of such powers, annuity and relief."

Decisions Construing Former § 60, Public Buildings Law

Right of individual to be appointive trustee and ex officio trustee at same time.—One individual cannot hold an appointive position and an ex officio position as trustee under this section at the same time, nor can he act in a dual capacity casting two votes upon questions before the board. By accepting the latter position the appointive position is deemed vacant. (1924) Op. Atty.-Gen. 233.

Trustee voting in dual capacity.—One individual cannot hold an appointive position and an ex-officio position as trustee under this law at the same time, nor can he act in a dual capacity casting two votes upon questions before the board. By accepting the latter position the appointive position is deemed vacant. Op. Atty.-Gen., (1924) 31 St. Dept. 748.

ARTICLE 1-D

§§ 26–29d. [Repealed]

Sections 26–29d, constituting Article 1-A as added by L. 1916, c. 566, and as amended by L. 1917, c. 49; L. 1918, c. 470; L. 1919, c. 407, were repealed by L. 1921, c. 211, § 1.

L. 1928, c. 605, § 3 purported to renumber Article 1-A as Article 1-O, however, said Article 1-A had been previously repealed by L. 1921, c. 211, § 1.

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ARTICLE 2

The National Guard

Section 31-a. Control of camp grounds and ranges [New; repealed].

§ 30. Composition and strength. The national guard of the state shall consist of general officers of the line, the several staff corps and departments as prescribed in tables of organization of the United States army or for the national guard. The officers and enlisted men on the retired list, reserve list and in the national guard reserve, the organizations forming the national guard at this date, such others as may be organized hereafter and such persons as are enlisted and commissioned therein. The governor shall have power to alter, divide, annex, consolidate, disband or reorganize any organization, department or corps and create new organizations, departments or corps when required by the provisions of this chapter or whenever in his judgment the efficiency of the state forces will be thereby increased, and he shall have power to change the organization of any organization, department or corps or to create new organizations, departments, or corps so as to conform to any organization, system of drill or instruction now or hereafter prescribed by the laws of the United States for the organization of the national guard and for that purpose the number of the officers and non-commissioned officers of any grade in any organization, department or corps may be increased or diminished and the grades of such officers and non-commissioned officers may be altered to the extent necessary to secure such conformity provided that no organization of the national guard, members of which shall be entitled to and shall have received compensation under the act of congress approved June three, nineteen hundred and sixteen, as amended, shall be disbanded without the consent of the president, nor without such consent, shall the commissioned or enlisted strength of any such organization be reduced below the minimum that shall be prescribed therefor by the president, and provided further that the assignment of organizations of the federally recognized national guard to divisions, brigades, and other tactical units shall be made in accordance with the provisions of the act of congress approved June three, nineteen hundred and sixteen, as amended. The governor shall have power to fix and from time to time to alter the maximum and minimum number of enlisted men which shall form part of any organization, department or corps within the limitations fixed by the act of congress approved June three, nineteen hundred and sixteen, as amended. The aggregate forces of the national guard in time of peace, fully armed, uniformed and equipped, shall be not less than ten thousand enlisted men.

Amended by L. 1917, ch. 644, § 5; L. 1921, ch. 588, § 9; L. 1924, ch. 114, § 8, in effect April 12, 1924. Many changes.

General power of governor.—To same effect as original annotation. People ex rel. Gillett v. De Lamater (1936) 247 App.Div. 246, 287 N.Y.S. 979, reversing 157 Misc. 711, 283 N.Y.S. 499.

Governor as commander in chief of militia is the supreme head of military forces in state, and as such he can do whatever in his judgment may be for the best interests of the state, either as to movement of troops or the relieving from or assigning to duty of officers in command of them. People ex rel. Gillett v. De Lamater (1936) 247 App.Div. 246, 287 N.Y.S. 979, reversing 157 Misc. 711, 283 N.Y.S. 499.

Deprivation of demand as constituting removal.—Deprivation of an officer of command is not a removal from office, since an officer retains his office so long as he retains his commission. People ex rel. Gillett v. De Lamater (1936) 247 App.Div. 246, 287 N.Y.S. 979, reversing 157 Misc. 711, 283 N.Y.S. 499.

Cancellation of National Guard officer's commission.—That federal government withdrew its recognition from brigadier general of state National Guard because of general's refusal to surrender his federal pay as a re-

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tired officer did not operate to cancel general's commission in National Guard, since government of militia is within the province of the state until militia has been called into national service. People ex rel. Gillett v. De Lamater (1936) 247 App.Div. 246, 287 N.Y.S. 979, reversing 157 Misc. 711, 283 N.Y.S. 499.

Appointment of additional officers.—Under provision of military law authorizing Governor to conform organization of National Guard to that prescribed by the federal government, and permitting for that purpose increase or decrease in number of officers, Governor was empowered to appoint an additional brigadier general. People ex rel. Gillett v. De Lamater (1936) 247 App.Div. 246, 287 N.Y.S. 979, reversing 157 Misc. 711, 283 N.Y.S. 499; People ex rel. Gillett v. De Lamater, 1937, 250 App.Div. 795, 293 N.Y.S. 750.

Judicial review.—In action by officer to try title to office of brigadier general of officer who succeeded in his command, civil court held without jurisdiction to review action of Governor in relieving officer from his duty, as such action related to organization and was of a military nature within the discretion of Governor, so that complaint failing to state a cause of action rendered striking out portions of answer error. People ex rel. Gillett v. De Lamater (1936) 247 App.Div. 246, 287 N.Y.S. 979, reversing 157 Misc. 711, 283 N.Y.S. 499.

Reduction of number of major-generals.— Under this section, the governor has power to reduce the number of major-generals of the National Guard from one to none. Op. Atty.-Gen. (1917) 13 St. Dept. Rep. 433.

Veteran Corps of Artillery.—This section prescribing the composition and strength of the National Guard does not include therein the Veteran Corps of Artillery. Andrews v. Gardiner, (1918) 185 App. Div. 477, 173 N. Y. S. 1, affirming (1917) 100 Misc. 622, 166 N. Y. S. 933.

§ 31. Organization and command of the national guard

The governor is authorized to prescribe the organization of the national guard to conform as far as practicable to that prescribed by the laws of the United States now or hereafter in force. National guard troops allotted to the state under the act of congress, approved June three, nineteen hundred and sixteen, as amended, when organized under authority of the governor, shall be maintained by the state and furnished with adequate and suitable armory accommodations, ranges and camp grounds. The national guard shall be commanded by a general officer of the line who shall be appointed to such command by the governor. As amended L.1917, c. 644, § 6; L.1921, c. 588, § 10; L.1924, c. 114, § 8; L.1940, c. 187, eff. March 18, 1940.

Amendment by L.1940, c. 187 substituted words "a general officer of the line who shall be appointed to such command by the governor" for "the senior general officer of the line in active service" in last sentence.

§ 31-a. [Control of camp grounds and ranges.] [Repealed.]

This section as added by L. 1925, ch. 194, was repealed by L. 1928, ch. 568, § 2, in effect March 24, 1928.

Scope and effect of repealed section.—This section superseded section 21. Expenditures made for camp grounds and rifle ranges under this section were governed by the provisions of law in section 17, subdivision 7. Op. Atty.-Gen., (1925) 35 St. Dept. 184.

Absolute control in senior general office.— See Op. Atty.-Gen., (1925) 35 St. Dept. 188.

§ 32. **Aides.** An officer of appropriate grade of any corps, department or arm of the service may be detailed by the governor as an aide to [1] *a general officer of the line. Officers may also be appointed as aides when such positions are provided for in the organization prescribed for the national guard.*

Formerly § 40, added by L. 1911, ch. 285. Renumbered 32 by L. 1917, ch. 644, § 42. Amended by L.1921, ch. 588, § 11, in effect May 5, 1921. Matter in italics new. Omission: [1] "the major-general . . . by the governor."

Former § 32 repealed by L. 1917, ch. 644, § 43.

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§ 33. Colored regiment of infantry. [Renumbered.]
Formerly § 40, added by L. 1913, ch. 793. Renumbered by L. 1917, ch. 644, § 42. Former § 33 repealed by L.1917, ch. 644, § 43.

§§ 34–39. [Repealed.]
Former §§ 34–39 repealed by L. 1917, ch. 644, § 43.

ARTICLE II-A

The New York Guard

Section 40. Organization.
40-a. Organization, composition and strength of the New York guard in time of war [New].
41. Commissioned officers.
41-a. Purchase of shoes for enlisted men in the New York guard [New].
42. Enlisted men.
43. Duties, privileges and immunities.
44. Command of the New York guard.

New article. Added by L.1918, ch. 239. Amended by L.1921, ch. 588, § 56, in effect May 5, 1921.

§ 40. Organization. Whenever the national guard shall be drafted or called into the service of the United States to the extent of not less than seventy-five per centum thereof, the New York guard shall be organized for active duty, and shall be continued during the absence of the national guard. The New York guard shall be organized and governed as prescribed by this article and by such rules and regulations as may be promulgated from time to time pursuant to the provisions of the military law. Except as otherwise provided by this article, all of the provisions of the military law and regulations in respect to the national guard shall apply to the New York guard. Upon the release from the service of the United States of the officers and enlisted men of the national guard they shall resume their membership in the active militia. The commissioned officers shall thereupon resume their commissions in the national guard in the grades held by them when drafted or called into the service of the United States or in any higher grade which they may have attained while in such service, and the enlisted men shall continue to serve in the national guard until the dates upon which their enlistments entered into prior to their draft or call would have expired if uninterrupted by such federal service. Enlisted men shall resume the grades held by them when drafted or called into the service of the United States or any higher grade which they may have attained while in such service. So far as practicable the officers and men thus released from the service of the United States shall be returned to their former organizations. Officers and enlisted men of the New York guard, eligible for commission or enlistment in the national guard, may, with their consent, be commissioned or enlisted therein, and those rendered surplus may, in the discretion of the governor, be discharged or placed upon the state reserve list. When the national guard shall have been returned to its former status as herein provided, the governor shall, in orders, designate a date upon which the New York guard shall be discontinued.

New. Added by L. 1918, ch. 239. Amended by L. 1921, ch. 588, § 12, in effect May 5, 1921. See §§ 32, 33, for sections formerly numbered 40.

§ 40-a. Organization, composition and strength of the New York guard in time of war

Notwithstanding any contrary provision of law, during the existing state of war, the governor, whenever in his judgment the efficiency of

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the New York guard will be thereby increased, may increase, alter, divide, annex, consolidate, disband or reorganize any organization or unit of the New York guard, create new organizations and units, prescribe the types of organizations or units to be created, the method of organization and the system of drill or instruction to be used in training such units; and, for that purpose, the number of the officers and non-commissioned officers of any grade in any organization or unit may be increased or diminished and the grades of such officers and non-commissioned officers may be altered, and the governor may fix and from time to time alter the maximum and minimum number of enlisted men and members of any organization or unit within the New York guard. Added L.1942, c. 911, § 1, eff. May 21, 1942.

§ 41. Commissioned officers. All officers in the New York guard shall be appointed and commissioned by the governor in his discretion subject to the requirements and conditions prescribed by the military law in respect to officers of the national guard, [1]*provided* that in time of war or other emergency the requirements of the military law in respect to existing rank or service, prior military service and previous examination may be suspended by order of the governor, *and provided further that officers on the state reserve list may be assigned by the governor in his discretion, to active duty with the New York guard in their respective grades and capacities with the same powers and authority as if appointed and commissioned in the New York guard, and shall be relieved of said duty and returned to the reserve list upon the termination of the war or other emergency, or earlier in the discretion of the governor.* Officers appointed and commissioned shall not be disqualified for their respective commissions by the termination of the war or other emergency during the period of which they were appointed. The form of oath to be taken by commissioned officers of the New York guard shall be prescribed in regulations. All of the provisions of the military law and regulations in respect to commissioned officers of the national guard or of the active or organized land forces of the state shall apply to commissioned officers of the New York guard, except as otherwise prescribed by this article.

New section. Added by L. 1918, ch. 239. Amended by L. 1934, ch. 84, in effect March 22, 1934. Amendment inserted matter in italics and struck out [1] "except." Former § 41 repealed by L. 1917, ch. 644, § 43.

§ 41-a. Purchase of shoes for enlisted men in the New York guard

The adjutant-general is hereby authorized and empowered to purchase shoes for the enlisted men in the New York guard, at a cost not to exceed five dollars per pair of shoes purchased. Added L.1941, c. 874, § 1, eff. April 29, 1941.

§ 42. Enlisted men. The qualifications for, and term of enlistment in, the New York guard and the form of oath to be taken upon enlistment shall be prescribed in regulations. All of the provisions of the military law and regulations in respect to enlisted men of the national guard or of the active or organized land forces of the state shall apply to enlisted men of the New York guard, except as otherwise prescribed by this article.

New. Added by L. 1918, ch. 239.

Enlistment of minors.— In the absence of a statutory requirement or of a regulation that the consent of parents be obtained to the enlistment of minors in the New York Guard, such consent is unnecessary and an enlistment without it is valid against both the enlisted man and his parents. Op. Atty.-Gen. (1918) 17 St. Dept. Rep. 511.

§ 43. Duties, privileges and immunities. All duties imposed by the military law or other statute of the state, or by the military regulations, upon organizations, officers and enlisted men respectively of the national guard or of the active or organized militia are hereby imposed upon the organizations, officers and enlisted men respectively of the New York

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guard, and all rights, privileges and immunities conferred by the military law or other statute of the state, or by the military regulations, upon organizations, officers and enlisted men respectively of the national guard or of the active or organized militia are hereby conferred upon the organizations, officers and enlisted men respectively of the New York guard, except as otherwise prescribed in this article, including relief from civil or criminal liability for acts done while on duty; right to pay, allowances, pensions and other compensations; expenses and subsistence; arms, uniforms and equipment; provision, maintenance, use and control of armories; eligibility to appointment on the staff of the governor; exemption from civil process and from jury duty; right of way; right to wear the uniform and to parade with firearms; and all other rights, privileges and immunities created by statute or custom not hereinbefore specifically enumerated. All of the provisions of the military law in respect to military courts in the national guard shall apply to the New York guard *except that in time of war or other emergency, such courts shall have the same powers of punishment as those prescribed by the articles of war, subject to the provisions of section fourteen of this chapter.*

New. Added by L. 1918, ch. 239. Amended by L. 1921, ch. 588, § 12, in effect May 5, 1921.

Pay and allowances.—Enlisted members of the New York guard are entitled to the pay and allowances prescribed by Article X. 1940, Op. Atty.Gen. 138.

State and municipal employees.—Enlisted members of the New York guard who are State or municipal employees are entitled to the protection of employment and compensation provided in section 245. 1940, Op.Atty. Gen. 138.

Jury service.—Members of New York Guard are entitled to same exemption as members of National Guard which seems now confined, under Judiciary Law, Arts. XVI, XVII, to active members with possible exception of grand jury service outside New York City. Feb. 14, 1941, Op. Atty. Gen.

§ 44. Command of the New York guard. The New York guard when organized for active duty shall be commanded by any general officer holding a New York state commission as such designated for this purpose by the governor. Such general officer shall have all the powers, in respect of the New York guard, conferred by law or regulations upon the commanding general of the national guard.

New. Added by L. 1918, ch. 239. Amended by L. 1921, ch. 588, § 12, in effect May 5, 1921. Amending act of 1921 eliminated matter of section as added by L. 1918, ch. 239, and substituted above matter.

ARTICLE 3

The Naval Militia of the State

Section 60. Allowance for salary of chief of staff [New].
61. Enlistment, transfer and discharge [New].
62. Chief petty officers, petty officers and enlisted men of the naval militia reserve [New; repealed].

§ 50. Composition and strength.

Section heading amended by L. 1921, ch. 588, § 13, in effect May 5, 1921.

(3) The governor shall have power at any time to change the organization of the naval militia [1] so as to conform to any organization, system of drill or instruction, which may be adopted for the navy of the United States and increase or decrease for that purpose the number of officers, chief petty officers,[2] petty officers *and enlisted men* in [3] organizations, and change the designations of officers or enlisted men.

Subd. (3) amended by L. 1921, ch. 588, § 13, in effect May 5, 1921.
Matter in italics new. Omissions: [1] "herein prescribed." [2] "and." [3] "those."

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(4) The strength of the naval militia in time of peace shall not exceed *four thousand five hundred officers and men, including marines,* but in time of war, invasion, insurrection or imminent danger thereof, the governor shall have power to increase this force beyond said *four thousand five hundred officers and men* and organize it as the exigencies of the service may require.

Subd. (4) amended by L. 1917, ch. 127, § 1; L. 1921, ch. 588, § 13, in effect May 5, 1921. Matter in italics new.

Effect of transfer of National Naval Volunteers to Naval Reserve.—The transfer by the President, under the Naval Appropriation Act of July 1, 1918 (34 U. S. C. A., § 1200, art. 65) of the National Naval Volunteers to the Naval Reserve, did not affect the status of any members of the Naval Militia who were in the National Naval Volunteers, except as active duties in the Naval Reserve might interfere with active duties in the Naval Militia. Op. Atty.-Gen., (1919) 20 St. Dept. Rep. 214.

§ 51. Organization and command. (1) The naval militia shall constitute a brigade. The governor is authorized to prescribe the organization of the naval militia to conform as far as practicable to that prescribed by the laws of the United States now or hereafter in force. (2) The naval militia shall be commanded by the senior line officer thereof in active service.

Amended by L. 1921, ch. 588, § 14, and ch. 595, § 1; L. 1924, ch. 558, § 1, in effect May 1, 1924. Section substantially new.

§ 52. Battalions. [Repealed.]

This section was repealed by L. 1921, ch. 588, § 55, in effect May 5, 1921.

§ 53. Divisions. [Repealed.]

This section was repealed by L. 1921, ch. 588, § 55, in effect May 5, 1921.

§ 54. Marine companies. [Repealed.]

This section was repealed by L. 1921, ch. 588, § 55, in effect May 5, 1921.

§ 55. Disbandments. [Repealed.]

This section was repealed by L. 1921, ch. 588, § 55, in effect May 5, 1921.

§ 56. Civilian cooks. The governor may authorize the employment of cooks by troops on duty under his orders or called out in aid of the civil authority, when such troops do not receive cooked rations, and such cooks shall receive as compensation for their services the pay of petty officers, second-class, while thus employed, paid in the manner that the officers and enlisted men with whom they are serving are paid.[1] The number of cooks that may thus be employed shall not exceed two to a division or company. For the headquarters of a brigade and of a battalion the governor may prescribe the number of cooks that may be employed. All civilian cooks shall be subject while thus employed, to the military law, the articles of war and the regulations as if they were regularly enlisted men of the naval militia.

Amended by L. 1921, ch. 595, § 1, in effect May 6, 1921. Amendment struck out [1] "provided such duty . . . status of outright loan."

§ 57. Retirement of commissioned officers. Any commissioned officer of the naval militia who shall be retired upon his own request shall have rank on the retired list of the grade next higher to that held by him in active service, provided he shall have been an officer in the United States navy in time of war.

Amended by L. 1921, ch. 595, § 1, in effect May 6, 1921.

Amendment struck out matter of former section and substituted above. Section 57 had previously been repealed by L. 1921, ch. 588, § 55, in effect May 5, 1921.

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§ 58. (1) Eligibility required to receive a commission in the naval militia. Commissioned officers in the naval militia must be citizens of the United States and of the age of eighteen years and upwards. No person who has been expelled or dishonorably discharged from any military or naval organization of the state shall be commissioned unless he has re-enlisted and served as provided in this chapter. No person shall be commissioned unless he shall possess the additional requirements herein prescribed for the particular office to which he is to be commissioned.

Subd. 1 amended by L. 1924, ch. 558, § 2, in effect May 1, 1924. The only change made was putting the number "(1)" before instead of after the catchline as formerly.

(2) A [1]*rear admiral, at the time of his appointment,* shall have been in the active service of [2]*the* state as [3]*an* officer of the naval militia or in the service of the United States as[2] *an* officer of the navy or in all combined for at least ten years, *but if not in active service at the time of his appointment, he must have served as an officer of the naval militia or as an officer of the United States navy, or in all combined, for at least fifteen years.* A captain of the naval militia at the time of his appointment shall have performed the same service for at least five years, *of which at least three years must have been as a line officer.* A commander or lieutenant commander for *line duty at the time of his appointment shall have performed the same service for* at least three years, *of which at least two years must have been as a line officer.* Staff officers or officers below the grade of [1]*rear admiral* except judge advocates, medical officers and chaplains must have served one year immediately preceding their appointment in the naval militia of this state, except that they may be credited with service in the United States navy or revenue marine, or if not in active service at the time of their appointment they must have had at least one year's service in the national guard or naval militia of the state or the army or navy of the United States or both combined. Staff officers of the brigade, except judge advocates, surgeons and engineers, must either be selected from the commissioned officers in active service in the naval militia of this state, who for one year immediately preceding their appointments have been in active service in such naval militia as commissioned officers, or if not in active service at the time of their appointment they must have had at least two years' previous service in the active militia of this state or in the army or navy of the United States or both combined as commissioned officer. Surgeons and assistant surgeons must be graduates of an incorporated school of medicine and of at least five years' practice if of the grade of lieutenant-commander; of at least three years' practice if of the grade of lieutenant; and of at least two years' practice if of the grade of lieutenant junior grade. A lieutenant-commander as engineer officer shall have been a commissioned marine engineer in the service of the United States, or shall hold a United States marine license not below the grade of chief engineer of ocean steamers of at least three thousand five hundred tons burthen. A lieutenant and a lieutenant junior grade as engineer officers shall have been a commissioned marine engineer in the service of the United States or shall hold a United States marine license not below the grade of chief engineer of inland steamers of at least one thousand and five hundred tons burthen respectively. Engineer officers who have passed the examination required by the navy department for line officers for engineering duty only in the naval militia and who have actually served on vessels of the navy for one or more naval militia cruises as engineer officers shall be deemed to have complied with the relevant provisions of this section as regards eligibility. A judge advocate must be a counselor-at-law of the supreme court of this state of at least five years' standing if of the grade of lieutenant-commander or at least three years' standing if of the grade of lieutenant. A chaplain must be a regularly ordained minister of some religious denomination.

Subd. (2) amended by L. 1924, ch. 558, § 2; L. 1925, ch. 49, § 1, in effect Feb. 27, 1925. Matter in italics new. Omissions: [1]"commodore." [2]"a."

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[1] "a line." Amending acts follow reading of second section 58 given on pp. 67–69 of book.

§ 59. Appointed officers of the naval militia. The rear admiral of the naval militia shall be appointed by the governor. Officers of the naval militia, excepting the rear admiral, shall be appointed by the governor upon the recommendation of their immediate commanding officers, approved by the commanding officer of the naval militia. When the governor desires to create new organizations he shall have the power in the first instance to appoint all the officers necessary to commence and complete such organization.

Amended by L. 1925, ch. 49, § 2, in effect Feb. 27, 1925.

§ 60. Allowance for salary of chief of staff. The chief of staff of the commanding officer of the naval militia shall receive an annual salary equal in amount to the pay and allowances of an officer of like grade and length of service in the navy of the United States; provided, that the amount of salary to be allowed hereunder shall not exceed five thousand dollars annually.

New. Added by L. 1917, ch. 127, § 2. Amended by L. 1921, ch. 588, § 15; L. 1924, ch. 558, § 3, in effect May 1, 1924. Amendment for 1924 struck out all of former section, including catchline, and substituted above.

§ 61. Enlistment, transfer and discharge. The qualifications for enlistment and re-enlistment in the naval militia, the term and form of oath to be taken and the manner and form of transfer and discharge of enlisted men shall be prescribed in regulations issued in accordance with this chapter.

New. Added by L. 1917, ch. 127, § 2. Amended by L. 1921, ch. 588, § 15, and ch. 595, § 2; L. 1924, ch. 558, § 4, in effect May 1, 1924.

§ 62. Chief petty officers, petty officers and enlisted men of the naval militia reserve. [Repealed.]

This section which was added by L. 1917, ch. 171, was repealed by L. 1921, ch. 595, § 6, in effect May 6, 1921.

ARTICLE 4

Commissioned Officers of the National Guard

Section 77-a. National guard reserve [New].
86. Staff officers [New].

§ 70. Commissions.

Acceptance of commissions in other military organizations.— A major-general of the National Guard does not vacate his office or commission by accepting a similar office or commission in the United States army. Op. Atty-Gen. (1917) 13 St. Dept. Rep. 440. But where National Guard officers on the reserve list accept commissions in the New York Guard, such acceptance under the provisions of this section effects resignations of former commissions held in the National Guard. Op. Atty-Gen. (1917) 13 St. Dept. Rep. 465.

§ 71. Eligibility required to receive a commission in the national guard. Commissioned officers must be citizens of the United States and of the age of [1] *twenty-one* years and upwards. No person who has been expelled or dishonorably discharged from any military or naval organization of the state shall be commissioned unless he has re-enlisted and served as provided in this chapter. No person shall be commissioned unless he shall possess *the qualifications now or hereafter prescribed by the laws of the United States and* the additional requirements herein pre-

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scribed for the particular office to which he is to be commissioned. A *general officer above the grade of* [1] *brigadier*-general, at the time of his appointment, must be an officer in active service in the national guard of this state of the grade of brigadier-general or field officer, and for seven successive years immediately preceding his appointment, he must have been in active service in said national guard as a commissioned officer or *he must have been in active service in the national guard of this state as a commissioned officer for a period of fifteen years, eight of which were as a field officer or general officer, or both combined, or he must have held the grade of field officer of the line in the national guard of New York and as such have been drafted into federal service and have commanded a unit during major operations.* A brigadier-general, at the time of his appointment, must be an officer in active service in the national guard of this state of the grade of field officer, and in addition, for five successive years immediately preceding his appointment, he must have been in active service in said national guard as a commissioned officer, or he must have been in active service in the national guard of this state as a commissioned officer for a period of [1] *ten* years, [1] *five* of which were as a field or general officer, or both combined, *or he must have held the grade of field officer of the line in the national guard of the state of New York and as such have been drafted into federal service and have commanded a unit during major operations. Former officers of the United States army or marine corps are also eligible for appointment as general officers of the line.* A colonel of the coast artillery corps or of a regiment, at the time of his appointment, must either be an officer in active service in the national guard of this state, and for three successive years immediately preceding his appointment, he must have been in active service in said national guard as a commissioned officer; or if not in active service at the time of appointment he must have had prior service of at least six years in the national guard of this state, or in the army of the United States, or in both combined, as a commissioned officer. A lieutenant-colonel and major of the line, at the time of his appointment, must either be an officer in active service, and for two successive years immediately preceding his appointment, he must have been in active service in the national guard of this state, as a commissioned officer, or if not in active service at the time of appointment, he must have had prior service of at least six years in the national guard of this state, or in the army of the United States, or in both combined, as a commissioned officer. [1] Officers of the corps of engineers, the signal corps, the adjutant-general's department, the inspector-general's department, the quartermaster [1] *corps* and the ordnance department above the grade of captain must possess the same requirements as officers of the line of the same respective grades. Officers of such corps and departments of or below the grade of captain must have served one year immediately preceding appointment in the national guard or naval militia of the state or if not in active service at the time of appointment they must have had at least one year's service in the national guard or naval militia of the state or the army or navy of the United States or both combined. An officer of the judge-advocate-general's department must be a counselor-at-law of the supreme court of this state of at least ten years' standing if of the grade of *colonel or* lieutenant-colonel, of at least five years' standing if of the grade of major, *of at least three years' standing if below the grade of major.* An officer of the medical corps must be a graduate of an incorporated school of medicine and of at least ten years' practice if of the grade of colonel or lieutenant-colonel; of at least five years' practice if of the grade of major; of at least three years' practice if of the grade of captain; and of at least one year's practice if of the grade of first lieutenant. An officer of the signal corps must have a knowledge of signaling, telegraphy, topography, and map making. A chaplain must be a regularly ordained minister of some religious denomination.

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Staff officers, including officers of the pay, inspection, subsistence and medical departments hereafter appointed shall have had previous military experience and shall hold their positions until they shall have reached the age of sixty-four years unless retired prior to that time by reason of resignation, disability or for cause to be determined by a court-martial legally convened for that purpose, and vacancies among said officers shall be filled by appointment from the officers of the militia of this state.

Amended by L. 1917, ch. 644, § 7; L. 1921, ch. 588, § 16, in effect May 5, 1921. Amendments added matter in italics and omitted matter where index figure (1) appears.

Deprivation of command as constituting removal.—Deprivation of an officer of command is not a removal from office, since an officer retains his office so long as he retains his commission. People ex rel. Gillett v. De Lamater (1936) 247 App.Div. 246, 287 N.Y.S. 979, reversing 157 Misc. 711, 283 N.Y.S. 499.

That federal government withdrew its recognition from brigadier general of state National Guard because of general's refusal to surrender his federal pay as a retired officer did not operate to cancel general's commission in National Guard, since government of militia is within the province of the state until militia has been called into national service. People ex rel. Gillett v. De Lamater (1936) 247 App.Div. 246, 287 N.Y.S. 979, reversing 157 Misc. 711, 283 N.Y.S. 499.

§ 72. Examinations. Every officer commissioned in the national guard or naval militia shall be examined as to his knowledge of military or naval affairs and general knowledge and fitness for the service.

Amended by L. 1917, ch. 644, § 8; L. 1921, ch. 588, § 16, in effect May 5, 1921. Amendment of 1921 eliminated section as amended by L. 1917, ch. 644, and substituted above matter.

§ 73. Examining boards. Boards [1] *for the examination of officers other than those who are required to be examined by boards appointed by the federal authorities* shall be appointed by the governor or caused by him to be appointed for the national guard by the [1] *commanding general thereof* or for the naval militia by the [1] *commanding officer thereof*, as the case may be. Such boards shall consist of not less than three officers, and shall have the same power to take evidence, administer oaths and compel witnesses to attend and testify and produce books and papers and punish their failure to do so, as is possessed by a general court-martial.

Examinations for commissioned officers of the national guard may be conducted by boards organized in accordance with the provisions of the national defense act or any amendment thereof which may hereafter be enacted by congress.

[1] *Nominations for commissions in the national guard shall be referred to the commanding general* for *preliminary* determination of the eligibility and fitness of the candidate to serve in the grade to which he is nominated. The *commanding general* may constitute and dissolve boards to pass upon the eligibility and fitness of candidates.[1]

Amended by L. 1917, ch. 644, § 9; L. 1921, ch. 588, § 16, in effect May 5, 1921. Amendments added matter in italics and omitted matter where index figure (1) appears.

§ 74. Appointed officers of the national guard. General officers of the line above the grade of brigadier-general shall be appointed by the governor with the consent of the senate; during the time that the senate is not in session the governor may make such appointments subject to subsequent confirmation by the senate. Brigadier-generals, officers to serve as administrative officers in the several staff corps and departments, and staff officers of tactical units, higher than brigades, shall be appointed upon the nomination of the commanding general of the national guard. Brigade staff officers shall be appointed upon the nomination of the commanding general of each brigade approved by the commanding general

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of the national guard. Colonels of regiments in brigades shall be appointed upon the nomination of the brigade commander, approved by the intermediate commanders and by the commanding general of the national guard. Colonels of regiments and majors of separate battalions or squadrons, or other similar organizations not a part of a tactical brigade, shall be appointed upon the nomination of the commanding general of the national guard. Commissioned officers of regiments and other similar organizations below the grade of colonel shall be appointed on the nomination of the commanding officer of the organization, approved by the intermediate commander and by the commanding general of the national guard. Officers below the grade of major of separate battalions, squadrons and lesser units shall be appointed on the nomination of the organization commander approved by intermediate commanders and by the commanding general of the national guard.

Amended by L.1917, ch. 644, § 10; L.1921, ch. 588, § 16, in effect May 5, 1921. Amendment of 1917 struck out all but first sentence of former section, substituting new matter therefor, and amendment of 1921 struck out section as amended, substituting the above under new catch line.

§ 75. **Oath of office.** Every officer duly commissioned shall, within ten days after his commission is tendered to him, or within ten days after he shall have been notified personally or by mail that the same is held in readiness for him by a superior officer, take and subscribe the following oath of office: "I, ..., do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of New York, against all enemies, foreign and domestic; that I will bear true faith and allegience* to the same; that I will obey the orders of the president of the United States and of the governor of the state of New York; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of.....in the national guard of the United States and of the state of New York upon which I am about to enter, so help me God." Such oath shall be taken and subscribed before an officer of the national guard qualified to administer oaths as provided in this chapter or before a notary public, commissioner of deeds or other officer authorized by the laws of this state to take and certify the acknowledgment and proof of conveyance of real property to entitle them to be recorded. In case of neglect or refusal to take and subscribe such oath within the time mentioned, such commission may be cancelled by the governor and a new appointment may be made to fill the vacancy.

Formerly § 78. Renumbered and amended by L.1917, ch. 644, § 11. Former § 75 repealed by § 43 of same act. Further amended by L.1932, ch. 272, § 2, in effect March 18, 1932. Many changes.

* So in original.

§ 76. **Brevet commissions.** [Repealed.]

Formerly § 79. This section as amended and renumbered by L. 1917, ch. 644, § 12, was repealed by L.1924, ch. 114, § 9, in effect April 12, 1924.

Former § 76 repealed by L. 1917, ch. 644, § 43.

§ 77. **State reserve list.** There shall be a reserve list for commissioned officers who have served in the active militia. This list shall include those commissioned officers who are lawfully carried on the reserve list at the date this act takes effect and such others as may be placed thereon in accordance with the provisions of this chapter. Any officer of the active militia may be placed by the governor on the reserve list on his own request approved by his intermediate commanding officer upon acceptance of his resignation from the active militia. Any person who has served as a commissioned officer in the active militia, or as a commissioned officer of the army, navy or marine corps of the United States, and who has been honorably discharged therefrom may be commissioned and placed

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upon the reserve list by the governor with the highest rank previously held by him after such examination as the governor may prescribe. Any officer hereafter placed upon the reserve list who has served in the active militia of this state or in the army, navy, or marine corps of the United States, or in two or more of such services combined, for a period of at least twenty-five years may, with the approval of the commanding officer of the national guard or naval militia, as the case may be, be commissioned by the governor upon the reserve list in one grade higher than the highest grade held by him in such active service. In computing such period of service, service as an enlisted man shall be counted as well as service as an officer. The time spent on the reserve list shall not be credited to an officer in the computation of seniority, pay, length of service or the privileges and exemptions pertaining thereto, except that the time during which he is detailed to active duty by the governor may be so credited. The provisions of this chapter relative to the resignation, retirement, dismissal and discharge of commissioned officers of the active militia, including discharge on the findings of a board of examination, shall be applicable to officers on the reserve list. Officers of the active militia who shall be rendered surplus by reduction or disbandments of organization or by the abolishing of their office or in any manner provided by this chapter, unless transferred to the national guard reserve, shall be withdrawn from active service and placed upon the reserve list or upon his own application may, with the approval of the governor, be discharged. The governor may, upon the recommendation of the commanding officer of the national guard or of the naval militia, respectively, detail officers on the reserve list for active duty, in which case they shall rank in their grade from the date of such detail, and the governor may return them to the reserve list at his discretion. At any time during which the New York guard is organized for active duty pursuant to article two-a of this chapter, all officers on the reserve list shall be subject to assignment to active duty therewith for such periods and subject to such regulations as the governor may prescribe. No officer on the reserve list shall be detailed to active duty for more than ninety days unless he has passed the examination prescribed for the office to perform the duties of which he is detailed.

Formerly § 80. Renumbered and amended by L.1917, ch. 644, § 13. Further amended by L.1919, ch. 406; L.1921, ch. 588, § 17; L.1925, ch. 147; L.1934, ch. 83, in effect March 22, 1934. Many changes. Former § 77 repealed by L.1917, ch. 644, § 43.

Acceptance of commission in United States army.—A major-general in the National Guard who accepts a similar commission in the United States army after the National Guard of the state has been disbanded by the draft of all its members into the United States army, should be entered upon the reserve list of commissioned officers, under this section. Op. Atty.-Gen., (1917) 13 St. Dept. Rep. 440. The same rule applies to all general officers of the New York National Guard. They may be restored to the active list by the governor but not by their own act. Op. Atty.-Gen., (1913) 19 St. Dept. Rep. 352.

§ 77-a. National guard reserve. The national guard reserve shall consist of such organizations, officers and enlisted men as may be authorized and prescribed by the laws of the United States and regulations issued thereunder.

New. Added by L. 1921, ch. 588, § 54, in effect May 5, 1921.

§ 78. Resignations. A commissioned officer tendering his resignation, if the governor accept it, shall receive an honorable discharge, provided he shall not be under arrest or returned to a military court for any deficiency, or delinquency. If the governor accept the resignation of an officer, who at the time shall be under arrest, under charges or returned to a military court for any offense, deficiency or delinquency, such officer shall then cease to be an officer of the national guard or naval militia, and shall receive a discharge in such form as the governor shall direct, nor shall he be again eligible to receive a commission unless he first re-enlist

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and shall have performed at least seventy per centum of duty in each year under such enlistment for two successive years.

Formerly § 81. Renumbered 78 by L.1917, ch. 644, § 14. Amended by L.1917, ch. 644, § 14; L.1924, ch. 114, § 10, in effect April 12, 1924. Many changes.

Former § 78 renumbered 75 by L.1917, ch. 644, § 11.

§ 79. Retirement. Any officer of the organized militia who has reached the age of sixty-four years shall be retired from active service and placed upon the retired list by the governor. Any commissioned officer who shall have served in the same grade for the continuous period of ten years, or in the military or naval service of the state as a commissioned officer for fifteen years, or in the case of an officer of the naval militia retiring such service may have been in the naval service of the state and the United States combined for fifteen years, provided at least ten years of such service shall have been in the state, may, upon his own request, be retired from active service and placed upon the retired list. The governor may in his discretion detail officers from the retired list to active duty and return them to such list in his discretion provided that officers retired for age shall not be detailed to command troops but only to perform duties of staff corps or departments or to sit on military courts or boards, except in time of war or imminent danger thereof when they may be detailed by the governor to perform any military duty designated by him.

Formerly § 82. Renumbered and amended by L.1917, ch. 419, § 15. Further amended by L.1921, ch. 588, § 18; L.1932, ch. 272, § 3, in effect March 18, 1932. Many changes.

Former § 79 renumbered 76 by L. 1917, ch. 644, § 37, and repealed by L. 1924, ch. 114, § 9, in effect April 12, 1924.

§ 80. Examination and discharge of officer. The governor may, whenever he may deem that the good of the service requires it, order any commissioned officer before a board of examination, to consist of [1] three [2] officers *senior in rank to the officer whose fitness for service is under examination,* which is hereby invested with the powers of courts of inquiry and courts-martial, and such board shall examine into the moral character, capacity and general fitness for the service, of such commissioned officer, and record and return the testimony taken and a record of the proceedings. If the findings of such board be unfavorable to such officer and be approved by the governor, he shall be discharged from the service. No officer whose grade or promotion would in any way be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decision of the board in such case. Failure to appear when ordered before a board constituted under this section, shall be sufficient ground for a finding by such board that the officer ordered to appear be discharged. *Upon the recommendation of the board, an officer discharged under the provisions of this section may be placed upon the retired list by the governor where the discharge was issued solely because of physical inability to perform active service.* An officer discharged under the provisions of this section shall not be eligible for [3] appointment as a commissioned officer in the militia, unless he first re-enlists [4] and [5] shall have performed at least [6] *seventy* per centum of duty in each year after such enlistment for [7] *two* successive years.

Formerly § 83. Renumbered and amended by L.1917, ch. 644, § 16. Further amended by L.1921, ch. 588, § 19; L.1924, ch. 114, § 11, in effect April 12, 1924. Matter in italics new. Omissions: [1] "not less than," [2] "nor more than five general or field." [3] "election or." [4] "as provided in the case of enlisted men dishonorably discharged." [5] "until he." [6] "eighty." [7] "three."

Former § 80 renumbered 77 by L.1917, ch. 644, § 13.

§ 80-a. Reserve list for enlisted men. [Repealed.]

This section as amended by L. 1921, ch. 588, § 20, was repealed by L. 1924, ch. 114, § 12, in effect April 12, 1924.

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§ 81. Dropping from the rolls or dismissal. *Any commissioned officer who absents himself without leave for three months shall be dropped from the rolls of the active militia.* An officer who shall have been absent without leave for a period of six months or more shall be dismissed by the governor.

Formerly § 84. Renumbered 81 by L.1917, ch. 644, § 42. Further amended by L. 1921, ch. 588, § 21, in effect May 5, 1921. Amendment of 1921 added matter in italics and changed section heading.
Former § 81 renumbered 78 by L. 1917, ch. 644, § 14.

§ 82. Removal.
Formerly § 85. Renumbered 82 by L.1917, ch. 644, § 42.
Former § 82 renumbered 79 by § 15 of same chapter.

§§ 83, 84, 85. [See §§ 80, 81, 82.]

§ 86. Staff officers. Staff officers, including officers of the pay, inspection, subsistence and medical departments hereafter appointed, shall have had previous military experience and shall hold their position until they shall have reached the age of sixty-four years unless retired prior to that time by reason of resignation, disability or for cause to be determined by a court-martial legally convened for that purpose, and vacancies among said officers shall be filled by appointment from the officers of the militia of this state.

New. Added by L. 1917, ch. 196.

ARTICLE 5

Enlisted Men of the National Guard

§ 95. Enlistments. The qualifications for enlistment and re-enlistment in the national guard, the term and form of oath to be taken shall conform to the requirements of the laws of the United States relating to the national guard now in force or hereafter to be enacted.

Amended by L. 1917, ch. 644, § 17; L. 1921, ch. 588, § 22, in effect May 5, 1921. Amendment of 1917 eliminated former section and substituted new matter therefor, and 1921 amendment struck out section as amended and substituted matter given above.

§ 96. Enlistment papers. Every person who enlists or re-enlists shall sign and make oath to an enlistment paper. Such oath shall be taken and subscribed to before an officer *authorized to administer the same by the regulations issued under this chapter.* A person making a false oath as to any statement contained in such enlistment papers shall upon conviction be deemed guilty of perjury.

Formerly § 97. Renumbered and amended by L.1917, ch. 644, § 18. Further amended by L.1921, ch. 588, § 22, in effect May 5, 1921. Amendments added matter in italics and omitted larger part of section.
Former § 96 repealed by L. 1917, ch. 644, § 43.

§ 97. Transfers. Enlisted men may be transferred to or from organizations, departments or corps or otherwise as provided by the regulations issued under this chapter.

Formerly § 98. Renumbered and amended by L.1917, ch. 644, § 19. Further amended by L.1921, ch. 588, § 23, in effect May 5, 1921. Amendment of 1917 substituted new text for that of former section, and 1921 amendment substituted above text for that of amended section.
Former § 97 renumbered 96 by L.1917, ch. 644, § 18.

§ 98. Warrant officers; non-commissioned staff and chief petty officers; non-commissioned and petty officers. Warrant officers shall be appointed and warranted by the governor in his discretion upon the recommendation of the commanding officer of the organization with which they are to serve. Non-commissioned staff officers, chief petty officers, non-commissioned officers and petty officers shall be warranted;

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a. In brigades, in regiments, in battalions or squadrons not part of a regiment and in other similar organizations by the commanding officer thereof;

b. In the quartermaster corps by the senior officer of the quartermaster corps unless otherwise prescribed herein. In the enlisted force on the medical department by the state surgeon unless otherwise prescribed herein. In the staff corps and departments by the senior officer of the corps or department in which the enlisted man is to serve;

c. Petty officers of separate divisions by the commanding officer of the naval militia;

d. In all cases not hereinbefore provided for by the commanding general of the national guard.

All non-commissioned officers shall be warranted in the discretion of the officer issuing the warrant upon the written nomination of the officer under whose immediate command they shall respectively serve. When an examination is required by federal laws or regulations or by state regulations no enlisted man shall be warranted until he shall have successfully passed such examination. In all other cases warrants may be issued without examination. The officer warranting a non-commissioned or petty officer shall have power to reduce him to the ranks.

Formerly § 99. Renumbered and amended by L.1917, ch. 644, § 20. Further amended by L.1921, ch. 588, § 24; L.1924, ch. 114, § 13, in effect April 12, 1924. Many changes.

Former § 98 renumbered 97 by L.1917, ch. 644, § 19.

§ 99. Dropping from the rolls. When an enlisted man of the national guard absents himself without leave and there is reason to believe that he does not intend to return, he may be dropped from the rolls as a deserter but only with the express authority of the governor, and under such regulations as he may prescribe.

Formerly § 100. Renumbered and amended by L.1917, ch. 644, § 21. Matter in section as it formerly read entirely eliminated and above text substituted. Former § 99 renumbered 98 by § 20 of same chapter.

§ 100. Restoration to duty. An enlisted man dropped as a deserter may be restored to duty by the governor and will thereafter serve for such period as added to the time served prior to his desertion will amount to the full term for which he enlisted.

Formerly § 101. Renumbered and amended by L.1917, ch. 644, § 22. Further amended by L.1921, ch. 588, § 24, in effect May 5, 1921. Section practically new as amended.

Former § 100 renumbered 99 by L. 1917, ch. 644, §§ 21 and 38.

§ 101. Discharges. An enlisted man discharged from service shall receive a discharge in writing [1] *in such form as may be prescribed by the governor.*

Formerly § 103. Renumbered and amended by L.1917, ch. 644, § 23. Matter in italics substituted for rest of section. Former § 101 renumbered 100 by § 22 of same chapter.

§ 102. War service. For all purposes under this *chapter,* officers and enlisted men of the *national guard or naval militia* who entered the *active service of the* United States *in time of war or under a call or draft by the president or who hereafter enter such service under like conditions* shall be entitled to credit for time so served as if *such* service had been rendered in the *state.*

Formerly § 104. Renumbered and amended by L.1917, ch. 644, § 24. Further amended by L.1919, ch. 11, in effect Feb. 20, 1919. New matter in italics. Some old matter omitted. Former § 102 repealed by L.1917, ch. 644, § 43.

§§ 103, 104. [See §§ 101, 102.]

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ARTICLE 6

SERVICE OF THE NATIONAL GUARD AND NAVAL MILITIA

§ 110. Responsibility for efficiency for service. The commanding general of the national guard and the commanding officer of the naval militia may each cause those under his command to perform any military duty he may require and shall be responsible to the governor for the general efficiency of the national guard or naval militia and for the drill, instruction, inspection, small arms and artillery practice, movements, operations and care of troops.

All other commanding officers shall be responsible to their immediate commanders for the equipment, drill, instruction, movements and efficiency of their respective commands.

Every commissioned officer and enlisted man shall be responsible to the officer under whose immediate command he serves for prompt and unhesitating obedience, proper drill and the preservation and proper use of the property of the United States, state or organization in his possession.

Amended by L. 1921, ch. 588, § 25, in effect May 5, 1921.

§ 111. Drills and parades. Each company, troop, battery and detachment shall assemble for drill and instruction, including indoor target practice, not less than forty-eight times each year, and shall in addition thereto participate in encampments, maneuvers or other exercises, including outdoor target practice, at least fifteen days in training each year, including target practice, unless such company, troop, battery or detachment shall have been excused from participating in any part thereof by the governor; provided, that credit for an assembly for drill or for indoor target practice shall not be given unless the provisions of the act of congress approved June three, nineteen hundred and sixteen, as amended, and of the regulations issued thereunder are complied with. Unless excused by the governor, all organizations of the national guard and naval militia shall be inspected and mustered each year on such dates as may be fixed by the commanding general of the national guard or the commanding officer of the naval militia as the case may be. In addition to such drills and periods of duty the commanding officer may require the officers and enlisted men of his command to meet for parade, drill and instruction at such times and places as he may appoint. No parade or drill of the active militia shall be ordered in time of peace for any day during which any general election shall be held, except in cases of riot, invasion or insurrection or imminent danger thereof.

Amended by L. 1917, ch. 644, § 25; L. 1921, ch. 588, § 26; L. 1924, ch. 114, § 14, in effect April 12, 1924. Many changes.

§ 112. Small arms practice. To encourage marksmanship the governor is authorized to offer annually a state decoration to those who shall excel in small arms practice; a prize not exceeding three hundred dollars in value, for competition among the organizations and corps of the national guard and naval militia, armed with rifle; a prize, not exceeding one hundred dollars in value, for competition among the organizations and corps (1) not forming part of or attached to a brigade; (2) of each brigade and (3) of the naval militia, armed with rifle; and three prizes of the value of one hundred dollars, seventy-five dollars and fifty dollars, respectively, to be awarded to the three companies (1) in organizations and corps not forming part of or attached to a brigade, (2) in each brigade and (3) in the naval militia having the highest general figure of merit. The governor may also in his discretion provide suitable decorations and prizes for proficiency in practice with other small arms and with light and heavy guns. All such prizes to be competed for under regulations prescribed by the commanding general of the national guard or command-

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ing officer of the naval militia approved by the governor. Members of any staff corps, corps or department assigned to duty with any command shall be considered a part of such command for the purpose of the competitions herein authorized.

Amended by L. 1921, ch. 588, § 27; L. 1924, ch. 114, § 14, in effect April 12, 1924. Many changes.

§ 115. Use of troops in civil disorders.

Cited in Lord, etc., Co. v. New York, (1928) 132 Misc. 64, 229 N. Y. S. 598.

§ 116. In case of insurrection or invasion. In case of insurrection or invasion or imminent danger thereof, within the limits of any command, the senior commanding officer of such command shall order out for the defense of the state, the forces under his command, or any part thereof, and immediately report his action and the circumstances of the case to the governor and the commanding general of the national guard or commanding officer of the naval militia, as the case may be.

Amended by L. 1921, ch. 588, § 28, in effect May 5, 1921. Amendment substituted words "major-general" for words "commanding general of the national guard" at end of section.

§ 117. Warning for duty. Orders for duty may be oral or written. Officers and enlisted men may be warned for duty as follows:

Either by stating the substance of the order, or reading the order to the person warned, or by delivering a copy of such order to such person or by leaving a copy of such order at the last known place of abode or business of such person with some one of suitable age and discretion, or by sending a copy of such order or a notice containing the substance thereof to such person by mail, directed to him at his last known place of abode or business or to the post-office nearest thereto. Such warning may be given by any officer or non-commissioned officer. The officer or non-commissioned officer giving such warning shall make a return thereof containing the names of the persons warned, and the time, place and manner of warning. Such return shall be verified by his oath, which may be administered by any commanding officer; such verified return shall be as good evidence, on the trial of any person returned as a delinquent of the facts therein stated, as if such officer or non-commissioned officer had testified to the same before the court on such trial. Every commanding officer shall make the like return, on honor, and with like effect, of every delinquency and neglect of duty of his officers and non-commissioned officers, and also of every enlisted man who shall refuse or neglect to perform such military duty as may be required.

Amended by L. 1924, ch. 114, § 15, in effect April 12, 1924.

§ 118. Excuses from duty. The officer ordering any military duty shall have the power to excuse any officer or enlisted man for absence therefrom upon good and sufficient grounds. The governor or [1] *commanding general of the national guard* or the commanding officer of the naval militia, with the approval of the governor, may relieve any organization of the militia on active duty from the further performance of such duty, and may order any other organization to perform such duty. *But the provisions of this section shall not curtail the rights of commanding officers to grant leaves of absence and furloughs as provided by regulations, unless the same be specifically modified by orders from superior authority.*

Amended by L. 1917, ch. 644, § 26; L. 1921, ch. 588, § 29, in effect May 5, 1921. Amendments added matter in italics and omitted [1] "major-general."

§ 120. Organization of depot battalions and units. [Repealed.]

Amended by L. 1917, ch. 644, § 27. Repealed by L. 1921, ch. 588, § 55, in effect May 5, 1921.

§ 121. Organization when aiding civil authorities. [Repealed.]

This section was repealed by L. 1921, ch. 588, § 55, in effect May 5, 1921.

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ARTICLE 7

MILITARY COURTS

Section 132. General courts-martial [New].
133. Special courts-martial [New].
134. Summary courts-martial [New].
135. Sentences to confinement [New].
136. Sentences of dismissal [New].
137. Warrants, subpoenas, attachments [New].
143. Naval militia [New].

§ 130. **The military courts.** The military courts of this state *for the national guard* shall be:

1. Courts of inquiry.
2. General courts-martial.
3. *Special* courts-martial.
4. Summary courts-*martial.*

They shall be constituted like, and have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts provided for by the laws and regulations governing the army of the United States, and the proceedings of courts-martial of the national guard shall follow the forms and modes of procedure prescribed for said similar courts.

Amended by L. 1917, ch. 644, § 28. Matter in italics new. Some omissions including former subd. 4.

Power to try civilians.—A civilian who shoots at a New York Guard sentry on duty guarding a canal, cannot be tried by a court martial. Op. Atty.-Gen. (1918) 14 St. Dept. Rep. 527.

§ 131. Courts of inquiry. Courts of inquiry, to consist of from one to three officers of at least equal grade with the officer, or with the senior officer if there be more than one, in regard to whom the court is ordered, may be ordered by the governor or under his directions by the commanding general of the national guard to examine into the nature of any transaction of or accusation or imputation against any officer or soldier. The court shall, without delay, report to the officer ordering it the evidence adduced, a statement of the facts, and, when required, an opinion thereon. Any officer may request a court of inquiry.

Amended by L. 1921, ch. 588, § 30, in effect May 5, 1921.

§ 132. General courts-martial. General courts-martial of the national guard may be convened by order of the governor, and such courts shall have the power to impose fines not exceeding two hundred dollars; to sentence to forfeiture of pay and allowances; to a reprimand; to dismissal or dishonorable discharge from the service; to reduction of noncommissioned officers to the ranks; or any two or more of such punishments may be combined in the sentences imposed by such courts.

New. Added by L. 1917, ch. 644, § 29. Former § 132 repealed by § 43 of same chapter.

Review on certiorari.—See to same effect as People v. Townsend, (1880) 10 Abb. N. Cas. 169, in original annotation, People v. Stotesbury, (1918) 182 App. Div. 691, 169 N. Y. S. 998.

§ 133. Special courts-martial. In the national guard the commanding officer of each garrison, fort, post, camp or other place, brigade, regiment, detached battalion or other detached command, may appoint special courts-martial for his command; but such special courts-martial may in any case be appointed by superior authority when by the latter deemed desirable. Special courts-martial shall have power to try any person subject to military law, except a commissioned officer, for any crime or offense made punishable by the military laws of the United States, and such special courts-martial shall have the same powers of

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punishment as do general courts-martial, except that fines imposed by such courts shall not exceed one hundred dollars.

New. Added by L. 1917, ch. 644, § 29. Former § 133 repealed by § 43 of same chapter.

§ 134. Summary courts-martial. In the national guard the commanding officer of each garrison, fort, post, or other place, regiment or corps, detached battalion, company, or other detachment of the national guard may appoint for such place or command a summary court to consist of one officer, who shall have power to administer oaths and to try the enlisted men of such place or command for breaches of discipline and violation of laws governing such organizations; and said court, when satisfied of the guilt of such soldier, may impose fines not exceeding twenty-five dollars for any single offense; may sentence non-commissioned officers to reduction to the ranks; may sentence to forfeiture of pay and allowances. The proceedings of such court shall be informal, and the minutes thereof shall be the same as prescribed for summary courts of the army of the United States.

New. Added by L. 1917, ch. 644, § 29. Former § 134 repealed by same chapter.

§ 135. Sentences to confinement. All courts-martial of the national guard, including summary courts, shall have power to sentence to confinement in lieu of fines authorized to be imposed; provided, that such sentences of confinement shall not exceed one day for each dollar of fine authorized.

New. Added by L. 1917, ch. 644, § 29. Former § 135 repealed by § 43 of same chapter.

§ 136. Sentences of dismissal. No sentence of dismissal from the service or dishonorable discharge, imposed by a national guard court-martial, shall be executed until approved by the governor.

New. Added by L. 1917, ch. 644, § 29. Former § 136 repealed by § 43 of same chapter.

§ 137. Warrants, subpoenas, attachments. In the national guard presidents of courts-martial and summary court officers shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue subpoenas and subpoenas duces tecum and to enforce by attachment attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts.

All processes and sentences of said courts shall be executed by such civil officers as may be prescribed by the laws of the state. For this purpose the marshals provided for by section one hundred and forty of this chapter shall be deemed civil officers and shall have all the powers and immunities of peace officers.

New. Added by L. 1917, ch. 644, § 29. Amended by L. 1921, ch. 588, § 31; L. 1924, ch. 114, § 16, in effect April 12, 1924.

Former section 137 repealed by L. 1917, ch. 644, § 43.

§ 138. Form of mandate; execution by public officers. Military courts are empowered to issue all process and mandates, including writs and warrants necessary and proper to carry into full effect the powers vested in said courts. Such process and mandates may be directed to the marshals of the court, the sheriff of any county and the constables and marshals of any town or city, and shall be in such form as may, from time to time, be prescribed by the governor in the regulations issued by him under this chapter. It shall be the duty of all officers to whom such process or mandate may be so directed to execute the same and make return of their acts thereunder according to the requirements of the

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same. The keepers and wardens of all city or county jails and of all other jails, penitentiaries or prisons designated by the governor or by the adjutant-general of the state under section fourteen of this chapter shall receive the bodies of persons committed by the process or mandate of a military court and confine them in the manner and according to law. Except as otherwise specifically provided in this chapter no fees or charges of any nature shall be demanded or required to be paid by the state or any military court or member thereof or person executing its mandate or process by any public officer for receiving, executing or returning any such process or mandate or for any service in connection therewith, or for receiving or confining a person in jail or custody thereunder.

Formerly § 149. Renumbered 138 by L.1917, ch. 644, § 42. Amended by L. 1924, ch. 114, § 17, in effect April 12, 1924.

Former § 138 repealed by L. 1917, ch. 644, § 43.

§ 139. Payment of fines and disposition thereof

Fines may be paid to a court or to an officer executing its process. The amount of any such fine may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due him, until said fine is liquidated. Any sum so deducted from any state pay or allowance shall be turned into the court which imposed the fine and shall be paid over by the officer receiving the same in like manner as provided for other fines and moneys collected under a sentence of a summary court-martial. A fine or penalty imposed by a military court upon an officer or enlisted man shall be paid by the officer collecting the same within thirty days to the treasurer of the city of New York if the organization of which the officer or enlisted man is a member has its home station in that city, otherwise to the treasurer of the county within which the organization, detachment or corps of which the person paying the same is a member or to which he is detailed or attached has its home station and shall form a part of and be credited to the military fund of such organization, corps or detachment. The treasurer of the city of New York or the treasurer of such county, as the case may be, shall thereupon report the amount thereof, designating the organization to which it belongs, to the adjutant-general of the state. Formerly § 142, renumbered 139 and amended L.1917, c. 644, § 30; amended L.1924, c. 114, § 18; L. 1941, c. 655, § 6, eff. April 22, 1941.

L.1941, c. 655, § 6, eff. April 22, 1941, substituted "treasurer" for "chamberlain".

See Note of Commission under section 185.

Former § 139 repealed by L. 1917, ch. 644, § 43.

§ 140. Marshals; appointment, bonds and duties. The president of a *general and a special* court-martial [1] *and a summary court officer* may *each* appoint by warrant,[2] and at any time remove, one or more marshals, each of whom shall, before entering upon his duties, execute a bond to the state in the penal sum of one thousand dollars, with sufficient sureties, to be approved by the president of the court or officer appointing him, for the faithful performance of his duties and the prompt payment of all moneys collected by him. Each marshal shall perform the usual duties of such marshals and shall execute any process, mandate or order issued by such president or court or officer, and perform all acts and duties by this chapter imposed on or authorized to be performed by any sheriff, marshal or constable. A bond given as herein provided may be prosecuted for breach of the conditions thereof, in the name of the people, by a judge-advocate, and all moneys recovered shall be paid to the military fund injured.

Formerly § 146. Renumbered and amended by L.1917, ch. 644, § 31. New matter in italics. Omissions as follows: [1] "or delinquency court". [2] "under his official signature".

Former § 140 repealed by § 43 of same chapter.

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§ 141. Indemnity for action of military courts.

Formerly § 155. Renumbered 141 by L.1917, ch. 644, § 42.
Former § 141 repealed by § 43 of same chapter.

§ 142. Presumption of jurisdiction.

Formerly § 156. Renumbered 142 by L.1917, ch. 644, § 42.
Former § 142 renumbered 139 by § 30 of same chapter.

§ 143. Naval militia. The provisions of this article shall apply to the naval militia except as otherwise provided in this section.

The naval courts of the naval militia shall be:

1. Courts of inquiry.
2. General courts martial.
3. Summary courts martial.
4. Deck courts.

They shall be constituted like, and have cognizance of the same subjects, and possess like powers except as to punishments, as similar courts provided for by the laws and regulations governing the navy of the United States, and such other powers as may by statute be granted to them, and the proceedings of the naval courts of the naval militia shall follow the forms and modes of procedure prescribed for said similar courts. All of the provisions of this article relating to special courts martial for the national guard insofar as consistent shall be applicable to summary courts martial of the naval militia; and all of the provisions of this article relating to summary courts martial for the national guard insofar as consistent shall be applicable to deck courts for the naval militia. Summary courts martial and deck courts for enlisted men shall be appointed by the commanding officer of each battalion for his command and in case of a division not a part of a battalion by the commanding officer of the naval militia. An officer of the naval militia may be assigned to act as judge advocate of a general court martial or court of inquiry. General courts martial and courts of inquiry may be wholly or partly composed of officers junior in rank to the officer to be tried or investigated where in the judgment of the officer appointing the court the interest of the service so require. Boards appointed for the naval militia shall be composed of officers of such grade or rank as the officer appointing the board may determine for each occasion. All the duties to be performed in the national guard by the commanding general of the national guard as provided by this article shall in the naval militia be performed by the commanding officer of the naval militia

New. Added by L. 1922, ch. 195. Amended by L. 1923, ch. 460, in effect May 21, 1923. Former § 143, being original § 157 as renumbered by L. 1917, ch. 644, was repealed by L.1922, ch. 195.
Original section 143 was repealed by L.1917, c. 644, § 43.

§§ 144, 145. [Repealed.]

Former §§ 144 and 145 repealed by L. 1917, ch. 644, § 43.

§ 146. [See § 140.]

Former § 146 renumbered 140 by L.1917, ch. 644, § 31.

§§ 147, 148. [Repealed.]

Former §§ 147 and 148 repealed by L. 1917, ch. 644, § 43.

§ 149. [See § 138.]

Former § 149 renumbered 138 by L.1917, ch. 644, § 42.

§§ 150–154. [Repealed.]

Former §§ 150–154 repealed by L. 1917, ch. 644, § 43.

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§§ 155, 156. [See §§ 141, 142.]
Former §§ 155 and 156 renumbered 141 and 142 by L.1917, ch. 644, § 42.

§§ 157, 158. [Repealed.]
Former §§ 157 and 158 repealed by L. 1917, ch. 644, § 43. See § 143.

ARTICLE 8

Arms, Uniforms and Equipments for the National Guard and Naval Militia

§ 167. Responsibility for public property. Every officer and enlisted man to whom public property has been issued, shall be personally responsible to the state for such property, and no one shall be relieved from such responsibility, except it be shown to the satisfaction of the governor that the loss or destruction of such property was unavoidable and in no way the fault of the person responsible for the same; in all other cases the value of the property lost or destroyed in the amount determined by a surveying officer or a board as herein provided shall be charged against the person at fault or with the concurrence of its commanding officer to the command to or for which it had been issued, and if not relieved from such charge by the governor, it shall be an indebtedness from such person or command to the state. If the commanding officer of the organization so charged shall not concur in the finding of the surveying officer, then the value of lost or destroyed property and the person or command to be charged therewith, shall be determined by a board to consist either of an inspector on the staff of the commanding general of the national guard or the commanding officer of the naval militia, or of a disinterested officer who shall be appointed by the commanding general of the national guard or the commanding officer of the naval militia to serve on such board, and the commanding officer of the organization in which such property is lost. In case of disagreement a third officer, not below the grade of major, shall be appointed, by the commanding general of the national guard or the commanding officer of the naval militia, and a decision of a majority of the board so constituted shall be final. Where the amount determined by such board as the value of lost or destroyed property is charged to a person it shall be deducted from any pay or allowance due or to become due to him from the state, and where it is charged to a command it shall be deducted one-half in successive calendar years from any allowance or money due or to become due to it from the state, except that on the disbandment of a command any such indebtedness then existing and such as may be charged to it upon a final settlement of property accounts shall, as soon as determined, be paid out of its military funds or unexpended appropriations. An action may be maintained by the people of the state in any court having jurisdiction thereof by the attorney-general upon the request of the adjutant-general of the state to recover any such indebtedness from a person to the state remaining unpaid at the expiration of one year from its determination by a board under this section.

Formerly § 169. Renumbered and amended by L.1917, ch. 644, § 32. Further amended by L.1921, ch. 588, § 32, in effect May 5, 1921. Amendments affected first three sentences.
Former § 167 repealed by L. 1917, ch. 644, § 43.

§ 168. Purchase of uniforms and equipments. The adjutant-general of the state shall advertise for bids in the manner provided in subdivision seven, section seventeen of this chapter, for the furnishing and making of the articles of uniform, equipment, military and naval supplies, in accordance with the regulations approved by the governor and specifications adopted by this state. Bidders shall be informed of the

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kind, quantity and quality of articles required and of the time, place and rate at which they are to be delivered. Bidders shall also be furnished with such specifications as have been adopted, and will be permitted to examine the standard samples at the places where deposited. No accounts for furnishing uniforms, equipment or military or naval supplies, shall be audited unless accompanied by the certificate of an inspector detailed by the commanding general of the national guard or by the commanding officer of the naval militia, to the effect that the material used is of the quality prescribed by the governor and that the articles are well made as specified in the contract under which they are supplied.

Formerly § 170. Renumbered 168 by L.1917, ch. 644, § 42. Further amended by L. 1921, ch. 588, § 33, in effect May 5, 1921.
Former § 168 repealed by L. 1917, ch. 644, § 43.

§ 169. Purchases from the United States.

Formerly § 171. Renumbered 169 by L.1917, ch. 644, § 42.
Former § 169 renumbered 167 by §§ 32 and 40 of same chapter.

§§ 170, 171. [See §§ 168, 169.]

Former §§ 170 and 171 renumbered 168 and 169 by L.1917, ch. 644, § 42.

ARTICLE 9

ARMORIES

Sec.
175. Definition of armory.
176. Brigade districts.
177. Expenses of armories, equipment and maintenance, a charge on the state.
178. Adjutant-general to furnish armories.
179. Armories and headquarters; how provided for or constructed.
180. Armories to be altered, repaired and equipped by adjutant-general.
181. Headquarters for regiments and battalions composed of divisions, separate troops or companies.
182. Armory property in city of New York.
183. Acquisition of sites and additional lands for armories by the state.
184. Control of armories.
185. Supervision of armory building; rules and regulations for.
186. Designation of officer in charge and control of armory building in New York city; apportionment of quarters.
187. Armory employees.
188. Laborers.
189. Compensation of employees in armories.
190. Armorers and employees for the naval militia.
191. Armories for naval militia.
192. Use of armories.
193. Inventory of property and accountability therefor.
194. Disposal of useless property.
195. Sale of armories and application of proceeds.

Article heading and schedule of sections was added by L.1942, c. 932, § 1, eff. July 1, 1942, which also repealed the former heading and schedule.

§ 177. Expenses of armories, equipment and maintenance, a charge on the state.

The expenses of erecting, altering, repairing, enlarging, renting, equipping, furnishing and maintaining armories including providing camp stools and chairs of a sufficient number, telephone service, lavatories, bath, water and wash closets, and the necessary apparatus, fixtures and means for heating, lighting and ventilating armories and for properly preserving the arms, uniforms, harness, wagons, equipment, books,

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papers, records and furniture kept therein and the construction of suitable lockers, closets, gun racks, desks and cases, and the compensation of all employees authorized by this chapter and the purchase of all tools, utensils, materials, supplies, appliances and facilities necessary for the cleaning, care, proper keeping, maintenance and preservation of the armory or portion thereof used or occupied by the organizations therein quartered or the arms, uniforms, equipments, books, papers, records and furniture used and kept by said organization in such armory and the expense of repairing, renewing, replacing or maintaining pavement of streets or gutters, curbing, flagging of sidewalks, fences, sewers and water pipes and their connection in, on or connected with the site upon which an armory is located, shall be a charge upon the state. Such expenses shall be paid out of any moneys of the state available therefor, upon certification, audit and approval in the manner provided by law, and subject to all applicable provisions of law relating to expenditure of moneys of the state. As amended L.1920, c. 625, § 1; L.1942, c. 932, § 2, eff. July 1, 1942.

L.1942, c. 932, § 2, eff. July 1, 1942, amended section generally, transferring financial obligations from counties to state.

Payments to county treasurers. L.1942, c. 932, § 34, eff. May 23, 1942, provides: "No moneys shall be paid by the state to any county treasurer pursuant to [former] section one hundred seventy-eight of the military law, notwithstanding any contrary provision of such section prior to its repeal on July first, nineteen hundred forty-two, as herein provided."

Municipal liability for expenses. L.1942, c. 932, § 35, eff. July 1, 1942, provides: "Notwithstanding any provision of any general, special or local law, no city hereafter shall be compelled to make any appropriation for the support, maintenance, preservation or improvement of any armory where such expense is a state charge pursuant to the provisions of the military law."

Interest on indebtedness as expense.—Interest on indebtedness was a part of the cost of construction or repairing of pavement of Porter Avenue, Jamestown, and was a proper charge against Fourth Brigade District, pursuant to this section, prior to amendment by L.1942, c. 932, § 2. 1938, Op.Atty.Gen. 104.

Local assessments for paving of streets.—Local assessments for the paving of streets adjoining property of the State occupied by armories in the Third and Fourth Brigade Districts were, prior to amendment by L.1942, c. 932, § 2, a charge upon the counties composing such districts. Op.Atty.Gen., 1933, 110.

Cost of reconstructing improvements.—The cost of reconstructing roads, walks and parking areas at the site of the new structure replacing an armory destroyed by fire, were, prior to amendment by L.1942, c. 932, § 2, a charge upon the brigade district, rather than upon the county in which the armory was located. 1935, Op.Atty.Gen. 118.

§ 178. Adjutant-general to furnish armories

Whenever it shall appear by the certificate of the commanding general of the national guard or of the commanding officer of the naval militia that an organization of his command has at least the minimum number of enlisted men established by law who legally can be required to perform the duties prescribed thereby, the adjutant-general shall, upon the demand of the commanding officer of such organization approved by the commanding general of the national guard or the commanding officer of the naval militia, as the case may be, and by intermediate commanding officers, rent and equip, within the appropriation therefor, for the use of such organization, a suitable and convenient armory, drill room and place of deposit for the safe keeping of the arms, equipment, accoutrements, uniforms and military property furnished under the provisions of this chapter. The size, suitability and convenience of such armory, drill room, place of deposit and the suitability and convenience of the equipment shall be determined by the commanding officer of the brigade to which the organization of the national guard demanding such armory belongs or is attached, or by the commanding general of the national guard if the organization of the national guard is not attached to a brigade, or in the case of the naval

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militia by the commanding officer thereof. The repairs, alterations and equipment of all buildings or accommodations erected and used for armory purposes pursuant to law shall be made under the direction and supervision of an inspector appointed by the adjutant-general. Formerly § 179, amended L.1921, c. 588, § 35; L.1928, c. 840, § 2; renumbered 178 and amended L.1942, c. 932, § 4, eff. July 1, 1942.

L.1942, c. 932, § 4, eff. July 1, 1942, renumbering former section 179 to be 178 and amending it generally, substituted "appropriation therefor" for "boundaries of such brigade district" in first sentence; substituted "and used for armory purposes pursuant to law" for "at the expense of a brigade district" in last sentence; and omitted former last sentence which exempted counties in city of New York.

Former section 178, as amended by L.1920, c. 26, § 1; L.1920, c. 625, § 2; L.1921, c. 588, § 34; L.1928, c. 328; L.1939, c. 858, § 24, was repealed by L. 1942, c. 932, § 3, eff. July 1, 1942.

§ 179. Armories and headquarters; how provided for or constructed.

Whenever the adjutant-general shall deem it expedient that an armory be provided for the use of one or more organizations of the national guard or naval militia or for a brigade, regimental, separate battalion or squadron headquarters, or the headquarters of a similar organization, the adjutant-general shall, except when such accommodation is provided in a state arsenal or armory, including armories the title to which is vested in the corporation of the city of New York, rent and equip, within the appropriation therefor, a suitable and convenient armory or provide suitable accommodations and equipment for such headquarters. When two or more armories are located in one building the commanding general of the national guard or the commanding officer of the naval militia, if only naval units are involved, shall designate the officer in charge and control of the building and apportion the quarters of each organization and regulate the military use and the care of the entrances, drill floors, basements and storage spaces of such building. Whenever in the opinion of the officer in charge and control of any armory or headquarters, the same shall be unfit for use as an armory or headquarters, he may make complaint to the adjutant-general who shall forthwith make or cause to be made an examination of such armory or headquarters, and, if after such examination the adjutant-general shall decide that such armory or headquarters is unfit for use, he shall immediately, within the appropriation therefor, direct the alteration, repair, enlargement or abandonment of the same, and, in case of an abandonment, provide another suitable armory or headquarters. Headquarters when provided shall be deemed for all purposes an armory within the meaning of that word whenever used in this chapter. Formerly § 180, amended L.1921, c. 588, § 36; L.1924, c. 114, § 19; L. 1928, c. 840, § 3; renumbered 179 and amended L.1942, c. 932, § 5, eff. July 1, 1942.

L.1942, c. 932, § 5, eff. July 1, 1942, renumbering former section 180 to be 179 and amending it generally, inserted matter relating to the city of New York and the phrase "within the appropriation therefor", appearing twice, and omitted former last sentence which exempted counties in city of New York.

Former section 179 was renumbered 178 and amended by L.1942, c. 932, § 4, eff. July 1, 1942.

§ 180. Armories to be altered, repaired and equipped by adjutant-general

In case expenditure is required for altering, repairing or enlarging any armory or for equipping the same with apparatus for heating, lighting or ventilating, lavatories, bath, water or wash closets or for lockers, gun racks or closets and other appliances and facilities, the necessity for such expenditure may be certified to the adjutant-general by the officer in charge and control of the armory or the officer in command of the organization to be quartered therein. If the adjutant-general shall ap-

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prove such expenditure, he shall, within the appropriation therefor, cause the work to be performed or the material to be furnished or the accommodations to be provided. The adjutant-general shall cause to be inspected all work performed and materials or articles furnished or quarters provided pursuant to such certificate and no money shall be paid for such work, materials, articles or quarters until the adjutant-general shall certify that such work has been properly performed and said materials and supplies are of proper quality and workmanship and such quarters suitable and adequate. Formerly § 181, amended L.1928, c. 840, § 4; renumbered 180 and amended L.1942, c. 932, § 6, eff. July 1, 1942.

L.1942, c. 932, § 6, eff. July 1, 1942, renumbering former section 181 to be 180 and amending it generally, inserted "within the appropriation therefor" in second sentence and omitted former last sentence which exempted armories owned by city of New York.

Former section 180 was renumbered 179 and amended by L.1942, c. 932, § 5, eff. July 1, 1942.

§ 181. Headquarters for regiments and battalions composed of divisions, separate troops or companies

The adjutant-general shall, when practicable, provide in state arsenals or armories, including armories the title to which is vested in the corporation of the city of New York, headquarters for regiments and similar organizations composed of separate troops, batteries or companies, and for battalions, and squadrons and similar organizations not parts of regiments composed of separate troops, batteries or companies and quarters for the field and staff officers, the non-commissioned staff officers and detachments attached to such organizations. Whenever it shall appear to the adjutant-general that headquarters or quarters cannot be provided in such a state arsenal or armory for the organization, officers, non-commissioned staff officers or detachments hereinbefore specified it shall be the duty of the adjutant-general to provide, upon the demand of the commanding officer of the organization requiring such headquarters or quarters, approved by the commanding officer of the brigade to which such organization is attached or the commanding general of the national guard, or the commanding officer of the naval militia, suitable and convenient headquarters or quarters. Headquarters or quarters, when provided, shall be deemed for all purposes an armory within the meaning of that word whenever used in this chapter, and the other provisions of this article, except as herein modified, shall apply to said headquarters and quarters. The expenses for rent, heat, light, water supply and telephone service shall not exceed annually the sum of seven hundred dollars for the headquarters of a regiment; four hundred and fifty dollars for the headquarters of a battalion or squadron not part of a regiment; three hundred dollars for other quarters. An armorer may be appointed for such headquarters or quarters who shall receive compensation to be fixed by the officer appointing him at not exceeding the following sum annually: For the headquarters of a regiment, five hundred dollars; for the headquarters of a battalion or squadron, not part of a regiment, four hundred dollars; for other quarters, two hundred dollars. Formerly § 182, amended L.1921, c. 588, § 37; L. 1928, c. 840, § 5; renumbered 181 and amended L.1942, c. 932, § 7, eff. July 1, 1942.

L.1942, c. 932, § 7, eff. July 1, 1942, renumbering former section 182 to be 181 and amending it generally, inserted in first sentence matter relating to city of New York and omitted "in the third or fourth brigade district" from second sentence after "that headquarters or quarters".

Former section 181 was renumbered 180 and amended by L.1942, c. 932, § 6, eff. July 1, 1942.

§ 182. Armory property in city of New York

All armories in the city of New York the title to which is vested in the corporation of the city of New York, and all armory equipment, utensils,

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materials and other property furnished or supplied to armories in the city of New York by such city or otherwise pursuant to provisions of this chapter as existing prior to July first, nineteen hundred forty-two, shall continue to be available, used and applied to and for the purposes of such armories in accordance with the provisions of this chapter, without cost or expense to the state, notwithstanding any provision of this chapter or other law, except that on and after July first, nineteen hundred forty-two, the expenses of altering, repairing, equipping, furnishing and maintaining such armories incurred on and after such date shall be a charge upon the state as provided in this article. Added L.1942, c. 932, § 8, eff. July 1, 1942.

Prior provisions relating to armories in the city of New York were contained in former section 183.

Former section 182 was renumbered 181 and amended by L.1942, c. 932, § 7, eff. July 1, 1942.

Maintenance of armories.—The duty of equipping, caring for and maintaining armories used by the organized militia of the state of New York, located in the city of New York and owned or leased by state or federal government, rested upon the city of New York; likewise with reference to all other armories in such city. The same duty rested upon the counties of the state, outside of the city of New York, with reference to armories located in the third and fourth brigade districts. (1923) Op. Atty.-Gen. 200.

Amount of appropriation.—Under section 230 of City Charter, New York Board of Estimate and Apportionment had to include in its final estimate sum not exceeding $8,000 in lieu of rentals to be paid to trustees for preservation, maintenance, and improvement of armory building owned by National Guard, and the amount to be appropriated within such limit was for determination of trustees of building. Tobin v. La Guardia, 1938, 11 N.E.2d 340, 276 N.Y. 34, reversing 248 App.Div. 574, 288 N.Y.S. 1091.

Under section 230 of New York City Charter, the Board of Estimate and Apportionment was vested with power to refuse such amounts as trustees reported necessary for such purpose unless it appeared on face of request, that amount requested was needed for purposes specified in said section. Tobin v. La Guardia, 1938, 11 N.E.2d 340, 276 N.Y. 34, reversing 248 App.Div. 574, 288 N.Y.S. 1091.

Where board of trustees of armory building owned by National Guard was entitled to an appropriation of not exceeding $8,000 a year for preservation, maintenance, and improvement of building, but where board was required to make report of amount needed for such purposes, fact that board's report included item for insurance on personalty and item for telephone service did not justify rejection of amount requested by building trustees in its entirety or limitation of amount appropriated to $1,000. Tobin v. La Guardia, 1938, 11 N.E.2d 340, 276 N.Y. 34, reversing 248 App.Div. 574, 288 N.Y.S. 1091.

The Board of Estimate and Apportionment was not vested with power to refuse such amounts as board of trustees of armory building owned by National Guard reported as necessary up to statutory limit of $8,000 provided in section 230 of City Charter in lieu of rental, unless it appeared on face of trustees' request for such amounts that items had been included not within authority granted to board of trustees. Tobin v. La Guardia, 1938, 11 N.E.2d 340, 276 N.Y. 34, reversing 248 App.Div. 574, 288 N.Y.S. 1091.

Appropriation under City Charter § 230.—Section of New York Charter requiring Board of Estimate and Apportionment to appropriate sum not exceeding $8,000 annually to be paid to trustees of armory building owned by National Guard in lieu of rental to be applied to preservation and improvement of armory building was not repealed by implication by enactment of provision of Military Law making general provision for maintenance of National Guard and for rental and maintenance of its quarters. Tobin v. La Guardia, 1938, 11 N.E.2d 340, 276 N.Y. 34, reversing 248 App. Div. 574, 288 N.Y.S. 1091.

Under section 230 of New York City Charter, building trustees were clothed with discretionary power as to amount to be requisitioned, but, if additional amounts were necessary, the additional expenditures were within the discretion of armory board and Board of Estimate and Apportionment. Tobin v. La Guardia, 1938, 11 N.E.2d 340, 276 N.Y. 34, reversing 248 App.Div. 574, 288 N.Y.S. 1091.

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Appropriation by New York City Board of Estimate and Apportionment to armory board for National Guard and appropriation of $1,000 to board of trustees of armory building owned by National Guard did not satisfy requirements of section 230 of New York City Charter requiring apportionment of not exceeding $8,000 a year to trustees of armory building in lieu of rental. Tobin v. La Guardia, 1938, 11 N.E.2d 340, 276 N.Y. 34, reversing 248 App.Div. 574, 288 N.Y.S. 1091.

§ 183. Acquisition of sites and additional lands for armories by the state

The adjutant-general, whenever he shall deem it necessary, is authorized to acquire by purchase or condemnation, within the appropriation therefor, suitable sites for the erection of armories, the title of which shall be taken in the name of and be vested in the people of this state. The adjutant-general may likewise acquire such lands adjoining the site of any armory as he may deem proper; and the title thereto shall be taken in the name of and be vested in the people of this state.

Whenever any real property is taken for the purpose of erecting a state armory thereon, the buildings on such property or the old materials in the same, may be sold by the adjutant-general at public or private sale for the best price that can be obtained and the net sum realized therefrom shall be paid into the state treasury. Formerly § 185, amended L.1928, c. 840, § 6; renumbered 183 and amended L.1942, c. 932, § 10, eff. July 1, 1942.

L.1942, c. 932, § 10, eff. July 1, 1942, renumbering former section 185 to be 183, amended section generally.

Former section 183, as amended by L.1921, c. 588, § 38; L.1924, c. 114, § 20; L.1941, c. 655, § 4, was repealed by L.1942, c. 932, § 9, eff. July 1, 1942. Present provisions relating to armories in New York City are contained in section 182.

Title.—As respects purchases of real estate by boards of supervisors for the site of an armory when requested to do so by state authority, title to such property is vested in the state and not in the county, and the boards have no discretion. Johnson v. State, 1939, 172 Misc. 776, 16 N.Y.S.2d 292.

Counties, liability for armory debts.—Where contract under which claimant had installed sewer and water connections on State Armory site was executed by claimant and the state adjutant general, and was approved by attorney general, adjutant general and chief engineer of Department of Public Works, claimant's cause of action for damages allegedly suffered in performance of contract and allegedly caused by negligent acts of the state and its agents and employees was against the state, rather than the county, notwithstanding that county paid cost of improvements when called upon to do so by adjutant general. Johnson v. State, 1939, 172 Misc. 776, 16 N.Y.S.2d 292.

Debts incurred in connection with the purchase of a site for and the erection and maintenance of an armory are in the first instance obligations of the state, and a creditor has no recourse except as against the state, and the fact that in scheme of state financing the county must pay such debts when called upon to do so by the state in no way makes county directly responsible to creditor. Johnson v. State, 1939, 172 Misc. 776, 16 N.Y.S.2d 292.

Authority to make contracts.—A state armory, together with the real property connected with it, is the property of the state in which title is vested by this section, and no person, or body, has authority to incur any expense for or in connection with such property except the state through the office of adjutant general or some agent of his with his approval. Johnson v. State, 1939, 172 Misc. 776, 16 N.Y.S.2d 292.

§ 184. Control of armories

Where a regiment, field hospital, ambulance company, company of signal corps, troop, battery, separate division or the headquarters of the division or a brigade or a battalion not part of a regiment or other similar organization occupies a portion of an armory or arsenal, such headquarters and quarters shall each be considered an independent

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armory upon the approval and the certificate of the commanding officer of the brigade to whose command the organization occupying such armory belongs or of the commanding general of the national guard for other organizations thereof attached to the headquarters of the national guard. The armory of an organization shall be under the charge and control of the senior officer thereof quartered therein. In no case shall the quarters occupied by detachments, subdivisions, units or headquarters of the same regiment or lesser organization and located in the same building be considered as separate and independent armories within the meaning of this section.

Commanding officers shall deposit in the armories provided for their organizations all military property received by them from time to time for the use of their respective commands. The adjutant-general of the state, the commanding general of the national guard, the commanding officer of the naval militia, the commanding officers of brigades, and any other officer detailed by any one of them, shall at all times have access to all part of all armories. On the application of one or more posts of the Grand Army of the Republic, or other veteran organizations of honorably discharged union soldiers, sailors or marines of any war of the United States, or sons of such veterans, or of posts of the American Legion or other organizations of honorably discharged soldiers, sailors or marines of the world war, or of posts of Jewish War Veterans of the United States, Inc., or of posts of the Catholic War Veterans, Inc., or of posts of the Italian American World War Veterans of the United States, Inc., the Polish Legion of American Veterans, Inc., the Army and Navy Union of the United States of America, or of incorporated associations of veterans of the different regiments or units of the national guard and naval militia of the state of New York, or of posts of the United Spanish War Veterans, or of posts of the Veterans of Foreign Wars of the United States, approved by the commanding officers of the brigade of the national guard in whose jurisdiction armories, the property of the state are located, and the officer in charge of such armory, subject also to the approval of the adjutant-general of the state and under such restrictions as he may prescribe, the officer in charge of any state armory designated by the adjutant-general of the state shall provide a proper and convenient meeting room or rooms in such armory where such posts or other veteran organizations may hold regular and special meetings, without the payment of any expense therefor. Formerly § 186, amended L.1920, c. 249; L.1921, c. 587, § 1; L. 1935, c. 789, § 3; L.1936, c. 197, § 3; L.1937, c. 261, § 1; L.1941, c. 262, § 3; L.1942, c. 793, § 3, renumbered 184, L.1942, c. 932, § 11; amended L.1943, c. 192, eff. March 30, 1943.

L.1941, c. 262, § 3, eff. April 11, 1941, inserted "or of posts of the Italian American World War Veterans of the United States, Inc., the Polish Legion of American Veterans, Inc."

L.1942, c. 793, § 3, eff. May 11, 1942, amending section generally, inserted "or of incorporated * * * state of New York" in third sentence of second paragraph.

L.1942, c. 932, § 11, eff. July 1, 1942, renumbered former section 186 to be 184, without reference to amendment to former 186 by L.1942, c. 793, § 3, eff. May 11, 1942. Section as set out here reflects changes made by said L.1942, c. 793, § 3.

L.1943, c. 192, eff. March 30, 1943, inserted "other" preceding "officer" in second sentence of second paragraph and "the Army and Navy Union of the United States of America" in last sentence.

Former section 184, as amended by L.1941, c. 655, § 5, was repealed by L.1942, c. 932, § 9, eff. July 1, 1942.

§ 185. Supervision of armory building; rules and regulations for. The officer in charge and control of a building used for armory purposes shall have general supervision and authority over the building as a whole, its grounds and approaches, and over those portions of, and facilities in, such building, grounds and approaches, which are used in common by more than one organization; and the superintendent of

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such building, if any, shall perform such duties as may be prescribed by the officer in charge and control of such building. Further rules and regulations not inconsistent with this chapter, governing the duties and functions of all employees in the several buildings used for armory purposes and occupied by more than one organization, may be prescribed by the several brigade commanders, subject to the approval of the commanding general of the national guard or the commanding officer of the naval militia, as the case may be. Formerly § 186-a, added L.1921, c. 587, § 2; L.1921, c. 595, § 5; amended L.1941, c. 655, § 1, renumbered 185, L.1942, c. 932, § 12, eff. July 1, 1942.

L.1941, c. 655, § 1, eff. April 22, 1941, incorporated separate enactments of this section by L.1921, cc. 587 and 595, in a single section.

Former section 185 was renumbered 183 and amended by L.1942, c. 932, § 10, eff. July 1, 1942.

Note of Commission.—Amendments by L.1941, c. 655, affecting sections 139, 183 (now repealed), 184 (now repealed), 186-a (now 185), 190, 192, 196 (now 194), 198 (now repealed), 211, 216, 226, were recommended by the Law Revision Commission. "Its purpose is to clarify sections 183 and 184, to incorporate in single sections 186-a, 190 and 198 two enactments or two amendments of such sections enacted at the same legislative sessions without reference to each other, and to correct references which are erroneous or obsolete by reason of the repeal of the Greater New York Charter and the enactment of the New York City Charter and the Administrative Code." 1941 Leg.Doc. No. 65(o); 1941 Report, Recommendations and Studies, pp. 502–511.

§ 186. Designation of officer in charge and control of armory building in New York city; apportionment of quarters. In the city of New York where two or more armories are located in one building the commanding general of the national guard or the commanding officer of the naval militia, if only naval units are involved, shall designate the officer in charge and control of such building and apportion the quarters of each organization and regulate the military use and the care of the entrances, drill floors, basements and storage spaces of such building. Formerly § 186-b, added L.1922, c. 295; amended L.1924, c. 114, § 21; renumbered 186, L.1942, c. 932, § 13, eff. July 1, 1942.

Former section 186 was renumbered 184 by L.1942, c. 932, § 11, eff. July 1, 1942.

§§ 186-a, 186-b. Renumbered 185 and 186, respectively, L.1942, c. 932, §§ 12, 13, eff. July 1, 1942

Former section 186-a was renumbered 185 by L.1942, c. 932, § 12, eff. July 1, 1942.

Former section 186-b, as added by L.1922, c. 295, and amended by L.1924, c. 114, § 21, was renumbered 186 by L.1942, c. 932, § 13, eff. July 1, 1942. An earlier section 186-b, as added by L.1921, cc. 587, 595, was repealed by L. 1922, c. 295.

§ 187. Armory employees

The following employees shall be allowed:

(a) For each armory and for the headquarters of the national guard, of each division and brigade thereof, and of the naval militia, one armorer.

(b) For each armory building containing more than one armory, one superintendent.

(c) For an armory building heated by steam, one engineer, and upon the certificate of necessity and approval of the commanding officer of the brigade to which the organization occupying such armory belongs, or of the commanding general of the national guard or the commanding officer of the naval militia, as the case may be, one assistant engineer; and if the heating or power plant consists of three or more high pressure boilers, one fireman.

(d) For an armory building occupied by a regiment or other similar organization, and lighted by electricity produced by machinery operated

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by a power plant within the building and upon like certificate and approval, one additional assistant engineer.

(e) For an armory building occupied by a coast defense command or a regiment of coast artillery and upon like certificate and approval, one electrician.

The employees authorized by this and the succeeding section shall be male residents appointed, unless otherwise provided by this chapter, by the officer having charge and control of the armory or building, approved by the commanding officer of the brigade, if the organization occupying such armory or building is part of a brigade, otherwise by the commanding general of the national guard or the commanding officer of the naval militia, as the case may be. No person over forty-five years of age shall hereafter be appointed under this or the succeeding section except that a person under fifty years of age may be appointed if he has served honorably in the national guard or naval militia of this state for a period of at least five years, and except that a person under fifty-five years of age may be appointed armorer or superintendent if he has served honorably in the national guard or naval militia of this state for a period of at least twenty-five years and is a Spanish war veteran, a world war veteran and has also served on the Mexican border. One employee in each armory where less than six are employed shall be ineligible by reason of such employment for enlistment in the national guard or naval militia. Where six or more are employed two shall be ineligible. All persons employed under this or the succeeding section on or after the twelfth day of April, nineteen hundred twenty-four, will be required to become members of the New York state employees' retirement system in the same manner as if such employees were in the competitive class of the civil service, provided that the foregoing in regard to joining the state retirement system shall not apply to persons who are eligible to retirement with compensation under this chapter upon reaching the required age and having the required service. All persons appointed or employed pursuant to this or the succeeding section shall perform such duties as shall from time to time be prescribed by the officer appointing or employing them. As amended L.1921, c. 587, § 3; L.1924, c. 114, § 22; L.1931, c. 336; L.1932, c. 272, § 4; L.1942, c. 932, § 14, eff. July 1, 1942.

L.1942, c. 932, § 14, eff. July 1, 1942, amended section generally, making changes in next-to-last sentence.

Transfer of employees. L.1942, c. 932, § 30, eff. July 1, 1942, provides: "Administrative officers and employees of the armory board of the city of New York immediately preceding the time this act takes effect may, with the consent of the city of New York acting through the mayor or other appropriate official or department thereof, if selected by the adjutant-general, be transferred to the office of the adjutant-general, division of military and naval affairs, in the executive department of the state, and shall be eligible for such transfer without further qualification; and they shall perform such duties and be paid such compensation as may be prescribed by the adjutant-general in the manner provided by law."

Retirement system membership. L.1942, c. 932, §§ 31 and 32, eff. July 1, 1942, provide:

"§ 31. Administrative officers and employees of the armory board of the city of New York transferred to the office of the adjutant-general, pursuant to this act, who are members of the New York city employees' retirement system at the time of such transfer, shall transfer their retirement system membership from such city system to the New York state employees' retirement system, subject to the provisions of section seventy-three of the civil service law relating to transfers of members between retirement systems.

"§ 32. The retirement system membership of all persons employed in armories in the city of New York pursuant to the provisions of sections one hundred eighty-seven, one hundred eighty-eight, one hundred eighty-nine and one hundred ninety of the military law, as amended, who are members of the New York city employees' retirement system at the time this act takes effect shall be transferred to the New York state employees retirement system as of such date, subject to the provisions of section seventy-three of the civil service law relating to transfers of members between retirement systems."

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§ 188. Laborers. To provide for the proper care and cleanliness of armories, arsenals and military property therein and within the limitations prescribed by this section, laborers may be appointed by the officer in charge and control of an armory or arsenal upon his certificate of necessity, approved by the commanding officer of the brigade, or the commanding general of the national guard, or the commanding officer of the naval militia as the case may be, to the number hereinafter specified.

Such laborers shall be of three classes, to wit:

(a) Technical laborers for the care of motor vehicles and artillery and signal instruments.

(b) Expert laborers for the care of other military and naval property requiring special skill and knowledge.

(c) Laborers for the care of floor surface, horses and other property and equipment not otherwise specified.

The number of such laborers shall not exceed the following:

(a) For an armory or arsenal, one laborer; also one laborer for each twenty thousand square feet of floor space or fraction thereof over one-half in excess of twenty thousand. Boiler and engine rooms, unused cellar rooms and employees' quarters shall not be included in computing floor space. Floor space added to an armory by alterations, improvements, betterments or additions completed after this section, as hereby amended, takes effect shall not be included in such computation, unless the amount so added exceeds twenty thousand square feet. The number of square feet of floor space in an armory or arsenal shall be certified by a person designated for such purpose by the adjutant-general. Such certificate, when approved by the commanding general of the national guard or the commanding officer of the naval militia, and intermediate commanding officers, shall be filed with the adjutant-general. Any such certificates heretofore filed with the comptroller of the city of New York or with a county treasurer, as formerly required by this section, shall be transferred and filed with the adjutant-general.

(b) For an armory of the field artillery, one technical laborer and one expert laborer for each battery quartered therein.

(c) For an armory of the signal corps, one technical laborer for each company quartered therein.

(d) For an armory occupied by coast artillery, one technical laborer.

(e) For an armory occupied by one or more divisions of the naval militia, one expert laborer.

(f) For an armory in which horses or mules used for military purposes are stabled, one laborer for each ten horses or mules. Where more than thirty horses or mules are so stabled, one additional laborer may be appointed. When more than fifty horses or mules are so stabled two additional laborers may be appointed. The total number of animals for which laborers may be employed hereunder shall not exceed the number authorized by tables of organization (peace strength) for the organization occupying the armory. Where horses or mules used for military purposes by organization in any city are stabled in approved quarters outside said city the allowance of laborers for their care shall be at the rate of one for each fifteen horses or mules.

(g) For an armory or arsenal occupied by an organization of the quartermaster corps, one expert laborer.

(h) For an armory occupied by an organization equipped with motor vehicles, such technical laborers and additional laborers as may be certified to be necessary by the commanding general of the national guard within the limits of the appropriations therefor.

Where laborers or other employees, except shipkeepers, are authorized and paid by the federal government for the care of any armory or military or naval property, they shall be counted in computing the number authorized by this chapter, and, with the consent of the federal government, they shall be paid the difference in compensation, if any, between that

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allowed by the federal government and that authorized by this chapter. As amended L.1921, c. 587, § 4; c. 595, § 3; L.1924, c. 114, § 23, L.1928, c. 840, § 7; L.1942, c. 932, § 15, eff. July 1, 1942.

L.1942, c. 932, § 15, eff. July 1, 1942, amended subd. (a) of third paragraph.

§ 189. Compensation of employees in armories

The persons appointed under the provisions of the two preceding sections shall receive compensation for the time actually and necessarily employed in their duties as follows: (a) Superintendent not to exceed seven dollars per day. (b) Armorers, engineers, electricians and technical laborers employed in armories occupied as division or brigade headquarters or by a regiment, battalion, squadron, or similar organizations, not to exceed seven dollars per day. (c) Armorers, engineers and technical laborers employed in armories, other than those specified under (b), assistant engineers, expert laborers and firemen, not to exceed six dollars per day. (d) Laborers, other than those specified under (b) and (c), not to exceed five dollars per day. An armorer, electrician, engineer or other permanent employee appointed by the commanding officer of an organization located in a city who under orders duly issued by such officer performs the whole or any part of his duties outside of the limits of such city shall receive the compensation provided for an armorer, electrician, engineer or other permanent employee employed in an armory located in such city. The compensation, as certified to by the officer appointing such persons, under the provisions of the two preceding sections, and as approved by the adjutant-general shall be paid by the state semi-monthly upon the certificate of such officer in the manner provided by law. A commissioned officer of the army, navy, marine corps, national guard, naval militia or naval reserve forces shall not be eligible for appointment to and shall not be employed in any position specified in this section, except that any employee under this section who is on the state reserve list or who holds a commission in the national guard reserve, or the officers reserve corps of the United States may be detailed to active duty under his commission by competent authority for a period of not to exceed thirty days in any one year without affecting his position as such employee. The appointing officer shall grant to each employee a vacation of fourteen days per year with pay. The employees provided for by this article shall be considered as being in the military or naval service of the state as the case may be. As amended L.1919, c. 640; L.1920, c. 26, § 2; L.1920, c. 628; L.1921, c. 587, § 5; L.1923, c. 467; L.1924, c. 114, § 24; L.1932, c. 272, § 5; L. 1942, c. 932, § 16, eff. July 1, 1942.

L.1942, c. 932, § 16, eff. July 1, 1942, amended section generally, making changes in sentence relating to semi-monthly payment and omitting former last paragraph.

Salaries of armorers, etc.— Under this section, as amended by L. 1919, ch. 640, armorers, etc., in armories housing battalions, were entitled to six dollars per day. Op. Atty.-Gen., (1919) 21 St. Dept. Rep. 331.

§ 190. Armorers and employees for the naval militia

On any vessel used as an armory of the naval militia, in accordance with section one hundred and ninety-two of this chapter, the ranking commanding officer of the organization or organizations quartered on said vessel shall have the right to appoint as many employees of the same classes described in the three preceding sections as, in his judgment, the care and safety of the vessel, its equipment, armament and stores demand, and to establish their respective duties, ratings and compensation, always provided, however, that the number of employees shall not exceed the number authorized for an armory by this article and that the gross compensation of such employees shall not exceed the amount per day authorized and established by section one hundred and eighty-nine of this chapter. The duties of the aforesaid employees shall include service on boats which are under the command of the ranking

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officer of such naval militia organization. Where employees, except shipkeepers, are authorized by the federal government, they shall be counted in computing the number of employees authorized by this section. As amended L.1921, c. 587, § 6; L.1921, c. 595, § 4; L.1941, c. 655, § 2, eff. April 22, 1941.

L.1941, c. 655, § 2, eff. April 22, 1941, incorporated separate amendments by L.1921, cc. 587 and 595, in a single section.

See Note of Commission under section 185.

§ 191. Armories for naval militia

Armories of the naval militia shall be situated immediately on or near navigable waters of the state, in such position as best to promote the efficiency of the service. The word "armory" as used in this article, and in any part of this chapter when applied to the naval militia, shall be held to include a vessel used as an armory for the purposes of instruction, drill and defense, and a building used for any like purpose or as a place of deposit for naval stores, equipments or property. Organizations of the naval militia shall have the same right to make requisition on the proper public officers for the erection of armories as is granted by law to organizations of the national guard and all provisions of law as to the acquisition of armory sites, the furnishing, altering, repairing, adding to and erecting armories and the furnishing of supplies to organizations quartered therein, are hereby made applicable to organizations of the naval militia. The commanding officer of the naval militia shall at all times have access to armories provided for organizations of his command. The department, bureau, officer or authority having the charge or control of docks within the limits of a city shall upon the requisition of the commanding officer of the naval militia, when directed so to do by the adjutant-general furnish without charge or expense to the state and naval militia suitable and adequate dock, berthing and mooring facilities for vessels and boats used by any organization of the naval militia located in said city and free access thereto at all times for the members of such militia. The adjutant-general is hereby authorized and empowered to furnish dock facilities for the use of the naval militia as hereinbefore stated and to determine the suitability and adequateness of the facilities of the dock, berthing and mooring facilities. The word "dock" where used in this section shall be construed to include wharves, piers, bulkheads, slips, basins, docks and water front. As amended L. 1928, c. 840, § 8; L.1942, c. 932, § 17, eff. July 1, 1942.

L.1942, c. 932, § 17, eff. July 1, 1942, made many changes.

§ 192. Use of armories. Armories shall be used as follows:

(a) By troops and cadet corps of organizations of the active militia.

(b) By posts of the Grand Army of the Republic or other veteran organizations of honorably discharged union soldiers, sailors or marines of any war of the United States, or sons of such veterans, or posts of the American Legion, or other organizations and honorably discharged soldiers, sailors or marines of the world war, or posts of Jewish War Veterans of the United States, Inc., or posts of the Catholic War Veterans, Inc., or posts of the Italian American World War Veterans of the United States, Inc., the Polish Legion of American Veterans, Inc., the Army and Navy Union of the United States of America, or of posts of the United Spanish War Veterans, or of posts of the Veterans of Foreign Wars of the United States, or of incorporated associations of veterans of the different regiments or units of the national guard and naval militia of the state of New York, as provided in section one hundred and eighty-four of this chapter.

(c) For the purpose of holding athletic, military or social events, conducted solely and exclusively under the auspices and management and for the benefit of any civil association existing under the provisions of section two hundred and fifty-two of this chapter, and quartered in the armory where such event is held, provided that the same is approved by

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the officer having charge and control of the armory, by his regimental or other organization commander, and by his brigade or division commander, or by the commanding general of the national guard or the commanding officer of the naval militia, as the case may be.

(d) For such purposes of any federal, state, county, or municipal bureau or department, or the military or naval forces of the United States, not interfering with its use by the troops quartered therein, as may be approved by the officer having charge and control thereof, by his regimental or other organization commander, and by his brigade or division commander, or the commanding general of the national guard or commanding officer of the naval militia, as the case may be.

(e) For such other purposes, not interfering with its use by the troops quartered therein, and upon such terms as may be approved by the officer having charge and control of the armory, by his regimental or other organization commander, and by his brigade or division commander, or by the commanding general of the national guard or commanding officer of the naval militia, as the case may be, provided that no armory shall be so used except under lease or agreement in writing, approved as aforesaid, by and between the officer having charge and control thereof, and the person, firm, association or corporation actually using the same or conducting any exhibition, entertainment or other enterprise therein; and provided further that all moneys paid or given, directly or indirectly, for the use of an armory or to obtain a lease thereof or permission to use the same, shall be deemed rentals within the meaning of this section. If paid to any person or officer other than the officer in charge and control of the armory, such moneys shall forthwith be paid over to the officer in charge and control, who shall, within thirty days after receiving the same, distribute such moneys in the manner prescribed in this section, and make report of such distribution to his brigade or division commander or the commanding general of the national guard, or commanding officer of the naval militia, as the case may be, and also to the adjutant-general of the state. No person, association, corporation, copartnership or other organization to whom or to which the permission to use an armory is granted, or a lease of such armory or any portion thereof is made, shall sublease the same or any portion thereof or grant permission to others to use the same, or any portion thereof, except as may be expressly provided in the original lease or agreement.

(f) When such use of an armory is not by an organization of the national guard or naval militia, a civil association formed under the provisions of section two hundred and fifty-two of this chapter, a veteran organization formed pursuant to the provisions of section one hundred and eighty-four of this chapter, or a state, county or municipal bureau or department, or the military or naval forces of the United States, there shall be first executed by the person, firm, association or corporation applying to use the same, a lease or agreement which shall set forth the full name and address of the person, association, corporation or copartnership so hiring the said armory, the terms of the agreement and the full amount of compensation of any kind or nature whatsoever to be paid for the use and occupation of said armory or any part thereof, and that said person, association, corporation or copartnership so hiring will not assign said contract nor sublet any part of the premises mentioned therein, except as may be in said lease provided, and will pay the compensation provided therein as and for rent for the use and occupation of said armory, and will also pay all expenses of heating, lighting and janitor or other service connected with such use, and further, there shall be executed by the person, firm, corporation, association, copartnership, or other organization applying to use the said armory and by a surety company, a surety bond to the people of the state conditioned to indemnify and save harmless severally the state and the city or county in which the armory is situated and the troops therein quartered and the civil associations formed by the same under this chapter from any loss,

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damage or expense to the armory or any property of the said state, county, city or troops or civil associations or of the United States therein, accruing from or incident to such use, and the expenses of heating, lighting and janitor and other services connected with such use. Such bond and lease shall be approved as to form and sufficiency by the officers who approve the use of the armory and an action for its breach may be brought in the name of the people of the state by a judge-advocate and all moneys recovered therein shall be paid to the treasurer or other appropriate financial officer of the state, county, city or civil association as the case requires.

(g) An armory shall not be used for political or religious purposes, except that an armory may be used for the purpose of holding the national or state convention of a political party, the approval of the officers mentioned in the preceding subdivision of this section being first duly obtained and the bond and lease provided for by said subdivision being first duly executed.

(h) Twenty-five per centum of all moneys paid as provided in this section for the rental of an armory of an organization of the national guard or naval militia together with all sums paid to cover expenses of heating and lighting shall be paid by the officer in charge and control of the armory to the adjutant-general and be by him paid into the state treasury. Fifty per centum of all moneys paid as provided in this section for the rental of an armory of an organization of the national guard or naval militia, not including sums paid to cover heating and lighting, shall be paid by the officer in charge and control of the armory to the treasurer of the city of New York if the armory is situated therein; otherwise to the treasurer of the county in which the armory is situated, such amount to be credited to and form a part of the military fund of the troops quartered in such armory. In cases where two or more organizations each occupy separate armories contained in the same building the moneys received for rentals for any part of said building used in common by said organizations except common entrances, hallways, elevators and stairways, required to be credited to the military fund as aforesaid, shall be apportioned to the military funds of the organizations quartered in such building proportionately to the number of enlisted men in each organization, at the time such rentals are received by the officer having charge and control. The balance of such moneys shall be paid to the adjutant-general of the state who shall hold the same until the first day of July next ensuing, and he shall then apportion and divide the same as follows: The moneys so received from organizations of the national guard or naval militia located within the city of New York, to and among all the organizations of the national guard or naval militia, as the case may be, located within such city, and the moneys so received from organizations of the national guard or naval militia, located without the city of New York to and among all the organizations of the national guard or naval militia, as the case may be, located without such city; all proportionately to the number of enlisted men present for duty at each of the five compulsory drills or parades of each such organizations as certified to the adjutant-general pursuant to the provisions of this chapter for the determination of its military fund. Such moneys so apportioned and divided shall thereafter form a part of the military fund of each such organization and be administered as such, and shall be in addition to and not in diminution of any amount fixed as the military fund of such organization as otherwise provided in this chapter. As amended L.1921, c. 587, § 7; L.1924, c. 114, § 25; L.1927, c. 705, § 2; L.1935, c. 789, § 4; L.1936, c. 197, § 4; L.1937, c. 261, § 2; L.1941, c. 262, § 4; L.1941, c. 655, § 7; L.1942, c. 793, § 4; L.1942, c. 932, §§ 18–20; L.1943, c. 191, eff. March 30, 1943.

Subd. (b) amended by L.1935, c. 789, § 4; L.1936, c. 197, § 4; L.1937, c. 261, § 2; L.1941, c. 262, § 4, eff. April 11, 1941; L.1942, c. 793, § 4, eff. May

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11, 1942; L.1942, c. 932, § 18, eff. July 1, 1942; L.1943, c. 191, eff. March 30, 1943. L.1943 in effect consolidated into single subdivision prior amendments thereof made by L.1942, c. 932, § 18, without reference to amendments by L.1941, c. 262 and L.1942, c. 793 and in addition inserted words "the Army and Navy Union of the United States of America."

Subd. (f) was amended generally by L.1942, c. 932, § 19, eff. July 1, 1942, substituting "eighty-four" for "eighty-six" in reference near beginning.

Subd. (h) amended by L.1927, c. 705, § 2, eff. April 6, 1927; L.1941, c. 655, § 7, eff. April 22, 1941; L.1942, c. 932, § 20, eff. July 1, 1942. L.1941 substituted "treasurer" for "chamberlain" in first sentence. L.1942 added first sentence and made several other changes.

See Note of Commission under section 185.

Leasing of armories for boxing matches.— Officers having charge and control of armories, with the approval of the division or brigade commander, may lease such armories to a licensed corporation to hold therein boxing and sparring matches or exhibitions for a portion of a day or night in each week or month during a rental period of one year upon such corporation's fully complying with all the provisions of this section. Cp. Atty.-Gen., (1920) 23 St. Dept. Rep. 182.

Memorial services.—Annual memorial service for veteran dead may be held in armory. Op. Atty. Gen. (1933) 105.

§ 193. Inventory of property and accountability therefor

Every officer in charge and control of an armory in the manner and form prescribed by the adjutant-general shall make and file an inventory and account of all property in his official custody, and of all property received, expended, lost or destroyed during the preceding year. Such inventory shall be filed with the adjutant-general on or before the fifteenth day of July and shall cover the fiscal year ending June thirtieth. Access to armories for the purpose of verifying the inventories and returns required to be filed by this section may be had at all proper times by duly authorized representatives of the adjutant-general.

Every officer in charge and control of an armory shall be personally responsible for the care and maintenance of such armory and for all public property contained therein; and no such officer shall be relieved of such property or responsibility, except such responsible officer making application for such relief and furnishing to the adjutant-general satisfactory proof of the proper expenditure of such property or the unavoidable loss or destruction thereof, and the said adjutant-general may thereupon relieve said officer from said responsibility. Formerly § 195, amended L.1920, c. 629; L.1921, c. 588, § 39; L.1928, c. 840, § 11; renumbered 193 and amended L.1942, c. 932, § 22, eff. July 1, 1942.

L.1942, c. 932, § 22, eff. July 1, 1942, renumbering former section 195 to be 193 and amending it generally, made many changes.

Former section 193, as amended by L.1920, c. 625, § 3; L.1921, c. 587, § 8; L.1924, c. 114, § 25; L.1928, c. 840, § 9, was repealed by L.1942, c. 932, § 21, eff. July 1, 1942.

Pavement assessment.—Paving assessment and interest could be included in the annual estimate for the armory at Jamestown and paid under former section 193. 1938, Op.Atty.Gen. 104.

§ 194. Disposal of useless property

Whenever property furnished to an armory as provided by law shall become obsolete, useless or superfluous, the adjutant-general may cause the same to be sold at public or private sale for the best price obtainable. The moneys derived from the sale thereof shall be paid into the state treasury. Formerly § 196, amended L.1928, c. 840, § 12; L.1941, c. 655, § 8; renumbered 194 and amended L.1942, c. 932, § 23, eff. July 1, 1942.

L.1942, c. 932, § 23, eff. July 1, 1942, renumbering former section 196 to be 194 and amending it generally, made many changes.

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Former section 194, as amended by L.1928, c. 840, § 10, was repealed by L. 1942, c. 932, § 21, eff. July 1, 1942.

See Note of Commission under section 185.

§ 195. Sale of armories and application of proceeds.

1. Upon the certificate of the commanding general of the national guard that it is to the public interest that an armory or armories owned by the state occupied in whole or in part by any organization or organizations of the national guard should be sold and the proceeds applied to the acquisition of a new armory or armories, such sale and application of proceeds may be made in the manner provided in this section, upon the approval of such certificate by the [1]*governor and the chairman of the finance committee of the senate and the chairman of the ways and means committee of the assembly.* In the case of an armory, owned by the state, occupied exclusively by an organization or organizations of the naval militia, the same procedure may be followed upon the certificate of the commanding officer of the naval militia.

2. Such certificate shall be filed [1]*in the executive department.* Upon the filing of such certificate, the governor, the [2]*attorney-general* and the *adjutant-general* shall constitute a commission to carry out the purposes of this section.

3. The commission so constituted is authorized to offer the property described in the certificate for sale at public auction to the highest bidder, after due publication and advertisement. It may accept the highest bid at such sale, or in its discretion, reject all bids, adjourn the sale to a specified date or otherwise, and advertise anew. Upon the acceptance of a bid the commission shall enter into a contract of sale with the purchaser who shall pay ten per centum of the purchase price upon the execution of the contract, and furnish a bond with sufficient sureties to be approved by the commission for the performance of the contract. The contract and bond shall be filed with the state comptroller. The state shall retain possession thereof and keep it in ordinary repair pending the performance of the contract.

4. The commission is authorized to lease such property as may be necessary for temporary use as an armory or armories, pending the erection of a permanent armory or armories, and the rental of such leased property and the cost of moving the organization or organizations both to the temporary and to the permanent armory or armories and of making the leased property available for temporary use as an armory or armories shall be deemed to be incidental expenses of the commission and paid as hereinafter provided.

5. Upon payment in full of the purchase price, pursuant to the contract, the commission shall convey, on behalf of the state to the purchaser named in the contract, or the legal representatives, successors or assigns of such purchaser, the land and buildings so sold by it, by a deed of grant in the statutory short form, and such deed shall be sufficient to transfer to and vest in the grantee all the right, title and interest in said land and buildings theretofore vested in the state. The proceeds of such sale shall be deposited in a bank or trust company authorized to receive deposits of public moneys, and payments therefrom shall be made upon checks signed by the adjutant-general of the state, and countersigned by the state comptroller.

6. The proceeds shall be applied to the incidental expenses of the commission, the acquisition of a site to be selected by the commission, and the erection and equipment of an armory thereon, under the direction of the commission and pursuant to a contract or contracts therefor which the commission is hereby authorized to make after inviting bids. If the land, or any part thereof, necessary for the new site selected by the commission cannot be acquired from the owners thereof by voluntary sale, the commission may acquire the same by condemnation. The cost of such new site and building, together with the incidental expenses of the commission, shall not exceed the proceeds

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of the sale of the property sold by the commission, and of any buildings upon the new site which may be sold by the commission, as hereinafter provided. Title to the new site shall be taken in the name of the state.

7. If there are any buildings upon the new site acquired by the commission, the commission may in its discretion cause the materials thereof to be used in whole or in part in the construction of the new armory, or may sell the whole or any part thereof. The proceeds of such sale shall be deposited with the proceeds of sale of the armory or armories sold by the commission, and shall be applied in like manner.

8. When more than one armory is covered by the certificate referred to in subdivision one of this section, the commission, in its discretion, may sell the armories to be sold, separately or together. The commission may also, upon the recommendation of the commanding general of the national guard or commanding officer of the naval militia as the case may be, apply the proceeds of any sale to the acquisition of one or more sites and the erection of an armory or armories thereon.

9. When the commission shall have incurred expenses under this section, it shall make and file vouchers therefor in the office of the state comptroller.

10. In the event of any conflict between this section and any other general or special laws now in force this section shall prevail.

11. The procedure provided for by this section shall be in addition to and not exclusive of other methods now provided by law for the acquisition of sites and erection of armories. Formerly § 199, added L. 1924, c. 114, § 26; amended L.1926, c. 462, § 2; L.1928, c. 839, §§ 1, 2; renumbered 195, L.1942, c. 932, § 25, eff. July 1, 1942.

Subd. 1 amended by L. 1928, ch. 839, § 1, in effect April 6, 1928. Matter in italics new. Omission: [1] "board of estimate and control."

Subd. 2 amended by L. 1926, ch. 462, § 2; L. 1928, ch. 839, § 2, in effect April 6, 1928. Matter in italics new. Omissions: [1] "with the governor." [2] "state comptroller."

Subd. 3 was purported to be amended by L. 1928, ch. 839, § 1, in effect April 6, 1928, but no changes were found therein.

Subd. 5 was purported to be amended by L. 1928, ch. 839, § 1, in effect April 6, 1928, but no changes were found therein.

Subd. 9 was purported to be amended by L. 1928, ch. 839, § 1, in effect April 6, 1928, but no changes were found therein.

Former section 195 was renumbered 193 and amended by L.1942, c. 932, § 22, eff. July 1, 1942.

§§ 196–199. Renumbered or repealed

Former section 196 was renumbered 194 and amended by L.1942, c. 932, § 23, eff. July 1, 1942.

Former section 197 was repealed by L.1921, c. 588, § 55, eff. May 5, 1921.

Former section 198, as amended by L.1920, c. 26, § 3; L.1928, cc. 140, 840; L.1941, c. 655, § 3, was repealed by L.1942, c. 932, § 24, eff. July 1, 1942.

Former section 199 was renumbered 195 by L.1942, c. 932, § 25, eff. July 1, 1942.

ARTICLE 10

Pay and Allowances

§ 210. Pay

Each officer and enlisted man ordered for duty by the governor or under his authority by the commanding general of the national guard or the commanding officer of the naval militia shall receive for every day actually on duty the same pay as officers and enlisted men of the army or navy of the United States of equal grade, rating and length of service and such allowances as may be authorized in regulations issued

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in accordance with the provisions of this chapter; provided that officers and enlisted men shall not receive said pay and allowances when ordered on duty under this section for inspection, muster, small arms practice, parade or review or field service not extending beyond one day; and provided, further, that officers and enlisted men shall not receive from the state the pay and allowances provided for by this section when ordered on duty thereunder in compliance with instructions from the federal government for service for which they are to receive pay and allowances from federal funds. As amended L.1921, c. 588, § 40; L. 1924, c. 114, § 27; L.1943, c. 505, eff. April 15, 1943.

L.1943, c. 505, eff. April 15, 1943, omitted proviso relating to pay of enlisted men of national guard of sixth and seventh grades.

Waiver of right to higher pay.—An officer ordered on duty at pay less than that fixed for one of his grade, who accepts such pay without protest, and continues to act under such order without protest, waives any claim to the higher pay of his grade, and cannot claim it after being relieved from active duty. Op. Atty.-Gen., (1919) 19 St. Dept. Rep. 377.

Salary of officers on permanent duty at headquarters of National Guard.—An officer on permanent duty at the National Guard headquarters may be paid a salary equal in amount to the pay and allowances of an officer of the army or navy of the United States of equal grade, rating and length of service; but the combined salaries of such permanent officers may not exceed the amount of the lump sum appropriated by the legislature for that purpose. (1923) Op. Atty.-Gen. 296.

§ 211. Pay of troops when used in civil disorders [See also § 211 below]

All officers and enlisted men while on duty, or assembled therefor, by order of the governor, upon the request of either the sheriff of a county or mayor of a city, in aid of the civil authorities, in case of riot, tumult, breach of the peace or resistance to process of this state, shall receive the pay set forth in section two hundred and ten of this chapter; and such compensation and all expenses incurred in connection with such duty or as a result thereof including quartering, caring for, warning for duty and transporting and subsisting the troops, and all other expenses including the expense incurred for pay, care, and subsistence of officers and enlisted men temporarily disabled in the line of duty, while on such duty, as set forth in section two hundred and twenty-three of this chapter, shall be paid by the county or city at the request of whose sheriff or mayor, as the case may be, the military or naval forces of the state have been heretofore or may hereafter be ordered out. If troops on duty in aid of the civil authorities render service in more than one county or city, the expenses and compensation of such troops shall be apportioned among the counties or cities in which such service is rendered by the officer who approves the vouchers and pay rolls of said troops. The county treasurer of such county shall, upon presentation to him of vouchers and pay-rolls for such expenses and compensation, certified by the commanding officers of the organizations or corps on duty in aid of civil authority in such county or counties, and approved by the commanding general of the national guard, if he be present in command where the duty is performed, or by the commanding officer of the brigade or of the naval militia to which the organizations or corps were attached, forthwith execute in behalf of and in the name of such county, a certificate or certificates of indebtedness for the money required to pay such vouchers and pay-rolls; such certificates shall bear interest at the rate of not to exceed six per centum per annum, and shall be made payable on the first day of February following the expiration of two months from their issue, and the amount thereof shall be raised in the next tax budget of said county succeeding their issue, and applied to the payment of such certificates. Said county treasurer shall sell such certificates at public or private sale, and apply the proceeds thereof to the payment of such expenses and compensation. In the city of New York the duties hereby imposed upon a county treasurer

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shall be performed by the comptroller of said city, who shall raise the money necessary to comply with the provisions of this section by the issue and sale of tax notes of said city; the sum necessary to pay said notes shall be included by the council and the board of estimate of said city in its final estimates for expenses of said city for the year succeeding that in which said notes were issued. Any county treasurer or public officer, who shall neglect or refuse to perform any of the duties required by this section, shall be personally charged with the costs and all necessary disbursements of any action or proceeding brought to compel such performance, together with a reasonable additional allowance to the plaintiff or relator in such action or proceeding, to be fixed by the court. As amended L.1917, c. 23; L.1921, c. 588, § 41; L.1941, c. 655, § 11, eff. April 22, 1941.

L.1941, c. 655, § 11, eff. April 22, 1941, substituted "tax notes" for "revenue bonds", "notes" for "bonds", and "council" for "board of aldermen" and omitted "and apportionment" following "board of estimate", in next to last sentence.

See Note of Commission under section 185.

§ 211. Pay of troops when used in civil disorders [See also § 211 above]

All officers and enlisted men while on duty, or assembled therefor, by order of the governor, upon the request of either the sheriff of a county or mayor of a city, in aid of the civil authorities, in case of riot, tumult, breach of the peace or resistance to process of this state, shall receive the pay set forth in section two hundred and ten of this chapter; and such compensation and all expenses incurred in connection with such duty or as a result thereof including quartering, caring for, warning for duty and transporting and subsisting the troops, and all other expenses including the expense incurred for pay, care, and subsistence of officers and enlisted men temporarily disabled in the line of duty, while on such duty, as set forth in section two hundred and twenty-three of this chapter, shall be paid by the county or city at the request of whose sheriff or mayor, as the case may be, the military or naval forces of the state have been heretofore or may hereafter be ordered out. If troops on duty in aid of the civil authorities render service in more than one county or city, the expenses and compensation of such troops shall be apportioned among the counties or cities in which such service is rendered by the officer who approves the vouchers and pay rolls of said troops. Upon presentation to the county treasurer of such county of vouchers and pay-rolls for such expenses and compensation, certified by the commanding officers of the organizations or corps on duty in aid of civil authority in such county or counties, and approved by the commanding general of the national guard, if he be present in command where the duty is performed, or by the commanding officer of the brigade or of the naval militia to which the organizations or corps were attached, provision shall forthwith be made by the county to make available the money required to pay such vouchers and pay-rolls. In the city of New York, upon similar presentation to the comptroller of said city, the money necessary to comply with the provisions of this section shall forthwith be raised. Any public officer, who shall neglect or refuse to perform any of the duties required by this section including such duties as may arise in connection with the financing of payments required to be made pursuant to the provisions of this section, shall be personally charged with the costs and all necessary disbursements of any action or proceeding brought to compel such performance, together with a reasonable additional allowance to the plaintiff or relator in such action or proceeding, to be fixed by the court. As amended L.1917, c. 23; L.1921, c. 588, § 41; L.1941, c. 655, § 11; L.1943, c. 710, pt. 1, § 1300, eff. July 2, 1944.

L.1943, c. 710, pt. 1, § 1300, eff. July 2, 1944, amended section 211, set out second, omitting, among other changes, provisions relating to issuance of certificates of indebtedness.

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Intent, construction and saving clauses of L.1943, c. 710, see note under section 1 of Local Finance Law.

Note of Commission.—Amendment by L.1943 was required by Local Finance Law §§ 20.00, 24.00, 29.00, 30.00, 57.00 and 61.00.—Draftsman's Note.

Approval of voucher.—Liability of a city under a contract given by military authorities acting in aid of the civil authorities under the order of the governor is governed by this section and not by the provisions of the city charter. Hence where the voucher lacks the approval of the officer required by statute to approve such vouchers it is defective and cannot be paid. Lord, etc., Co. v. New York (1929) 251 N. Y. 198, 167 N. E. 220, reversing 225 App. Div. 741, 232 N. Y. S. 798, which affirmed (1928) 132 Misc. 64, 229 N. Y. S. 598.

§ 212. Pay of officers serving on boards, commissions and courts. Members of boards and commissions created by this chapter, and all officers, detailed to serve on any board or commission ordered by the governor, or under his authority by the commanding general of the national guard, or the commanding officer of the naval militia, or on any court of inquiry, court-martial or summary court, ordered by proper authority in pursuance of any provision of this chapter, shall be paid for each day actually employed in such board, commission, or court, or engaged in the business thereof, or in traveling to and from the same. An officer detailed to serve on a summary court for the trial of enlisted men shall be paid for each day actually employed therein, engaged in the business thereof, or in traveling to and from the same, and traveling expenses and subsistence when such court shall be held at a place other than the city or town of his residence. An officer to whom a warrant for the collection of fines under the sentence of a military court is delivered shall be paid by retaining to his own use, twenty-five per centum of the fines collected by him. Said percentage shall be taxed by the officer issuing the warrant and indorsed thereon and added to the amount collectible to satisfy the sentence of the court. In addition to this percentage a marshal of a military court shall be paid two dollars for each day actually employed in the execution of the duties required of him and mileage or actual necessary traveling expenses while engaged in executing any process or mandate of a military court. Mileage shall be computed at the rate of ten cents for each mile necessarily traveled going and returning to serve any process or mandate of a military court, the distance to be computed from the place where it is served to the place where it is returnable.

Amended by L. 1921, ch. 588, § 42, in effect May 5, 1921.

§ 213. Payment of expenses of summary courts-martial. The compensation and necessary expenses of the officer holding a[1] *summary* court[2]*-martial,* and of the clerk and marshal thereof, and the actual expenses of the court for the time engaged in the trial of enlisted[3] *men* and the necessary business connected therewith, shall be paid by the command to whose military fund fines collected from such[3] *enlisted men* are paid, from the military fund of such command, in the same manner as other accounts are paid from such fund.

Amended by L. 1917, ch. 644, § 33. New matter in italics. Omissions as follows: [1] "delinquency". [2] "for enlisted men". [3] "delinquents". Section heading also changed.

§ 214. Pay of officers and enlisted men assigned to special duty. Any commissioned officer assigned to special duty by the governor or under his authority, shall be paid for the time actually employed, and his necessary traveling expenses and subsistence, when such payment is authorized by the governor. Judge-advocates shall be paid for services and necessary disbursements in bringing any suits provided for in this chapter, and for services in actions or proceedings by habeas corpus, certiorari or otherwise, such compensation as shall be approved by the governor. All staff officers shall be paid for special service ordered by competent authority, with the approval of the governor. Enlisted

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men, on duty under the orders of the governor, but not at the time serving with troops, shall receive pay, their actual traveling expenses and subsistence.

Amended by L. 1924, ch. 114, § 28, in effect April 12, 1924, by inserting words "and necessary disbursements" in second sentence.

Payment of Judge Advocate.—The Judge Advocate of the New York National Guard may be paid for legal services rendered to the New York National Guard or its officers on matters pertaining to their military duties, when ordered to do so by proper authority in accordance with the provisions of the Military Law and with the approval of the Governor. Op. Atty. Gen. (1933) 237.

§ 215. Allowances for officers

To assist in uniforming and equipping themselves, commissioned officers who have been in active service as such and who have performed eighty per centum of all ordered duty during a calendar year of twelve months, beginning with the first day of January, shall receive annually fifty dollars, and officers who have been in active service as such during a period less than a calendar year and who have performed eighty per centum of all ordered duty during such period of service shall receive such proportion of the allowance for the year as the period of service performed by them bears to a calendar year, provided that the allowance herein prescribed shall not be granted to any officer in respect to any period for which he shall have received pay or allowance from the federal government. As amended L.1921, c. 587, § 9; L.1943, c. 394, § 1, eff. April 8, 1943.

L.1921, c. 587, § 9, eff. May 5, 1921, added proviso at end of section.

L.1943, c. 394, eff. April 8, 1943, omitted "if mounted", preceding "fifty dollars", and, "and if dismounted, thirty dollars" following "fifty dollars".

§ 216. Allowances for military organizations; military fund

On the certificate of the adjutant-general of the state the comptroller shall annually draw his warrant in favor of each county treasurer specified in such certificates, and of the treasurer of the city of New York for the organizations of the active militia mentioned therein as follows:

(a) To defray the cost of mounted drills and parades, and for the feed and shoeing of horses and mules in the service of the state, and for such other military purposes as may be authorized by the adjutant-general of the state;

For each regiment of engineers (animal drawn), one thousand dollars.

For each regiment of infantry, cavalry, field artillery, or similar organizations, two hundred and fifty dollars.

For the headquarters of a battalion of signal corps, one hundred and fifty dollars.

For each battery of artillery (animal drawn), twelve hundred and fifty dollars.

For each troop of cavalry, seven hundred and fifty dollars.

For each company of the signal corps or ambulance company (animal drawn), five hundred dollars.

(b) To defray other necessary military expenses;

For each company of signal corps, hospital company, ambulance company, separate company, separate troop, separate battery or separate division, two hundred and fifty dollars.

For each regiment, battalion and squadron not a part of a regiment, or other similar organization, company of signal corps, hospital company, ambulance company, separate company, separate troop, separate battery or separate division, a sum equal to one dollar and sixty cents for each of its enlisted men present for duty at each of five of the compulsory drills or parades required in this chapter, which sums, together with the fines and penalties collected from delinquent enlisted men, shall constitute the military fund of such regiment, battalion or squadron not part of the regiment, or other similar organizations, company of signal corps, field hospital, ambulance company, separate troop, separate

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battery, separate company or separate division. When the amount of one dollar and sixty cents is allowed for enlisted men serving in a headquarters detachment of a regiment, separate battalion, separate squadron or other similar organization, such amount together with the fines and penalties collected from such enlisted men shall form part of and be administered as part of the military fund of the organization of which such detachment is a part. For the purposes of allowances granted in this section the corps of engineers and officers and enlisted men of the coast artillery corps serving in a coast defense command shall each be considered a regiment and enlisted men of any corps or department attached to or assigned to duty with any organization, corps or coast defense command shall be considered as enlisted men of such organization, corps or coast defense command. Separate troops, batteries, companies and divisions, if organized into squadrons, battalions or regiments, or other similar organizations, shall thereby not be deprived of the allowances granted each in this section. Muster and inspection when ordered shall be counted as one of the five compulsory parades required to obtain the annual allowance. As amended L.1921, c. 587, § 10; L.1924, c. 114, § 29; L.1941, c. 655, § 9, eff. April 22, 1941.

L.1941, c. 655, § 9, eff. April 22, 1941, substituted "treasurer" for "chamberlain" in opening clause.

See Note of Commission under section 185.

§ 217. Audit and expenditure of funds. The funds allowed under the preceding section shall be expended for the benefit of the command to which the same are allowed upon the approval and audit of an auditing board constituted as follows:

a. In regiments, battalions, squadrons, and other similar organizations the three ranking line officers.

b. In the corps of engineers the three ranking officers of the corps serving with the engineer troops.

c. In the separate batteries, separate troops and separate companies the line officers of the organization.

d. In companies of signal corps the officers of the corps on duty with the company.

e. In hospital and ambulance companies and other medical units the officers of the medical corps on duty therewith.

f. In the naval militia the commanding officer and the two line officers highest in rank in the organization.

The auditing board shall draw an order on the proper county treasurer for the payment of each just claim allowed by it, but such order shall not be paid by the county treasurer until after the vouchers in support of such claim shall have been approved by the commanding general of the national guard for organizations or corps attached to his headquarters, by the commanding officer of a brigade for an organization attached to such brigade, by the commanding officer of the naval militia for organizations of the naval militia as the case may be and by the adjutant-general of the state. Vouchers presented by an auditing board for a unit forming part of or attached to a regiment or other organization shall not be paid until they have been approved as aforesaid and, in addition, have been approved by the regimental or other organization commander. When by reason of a vacancy or vacancies in office or of relief from duty or absence on leave of an officer or officers of an organization a quorum of qualified officers cannot be obtained for its auditing board as constituted by this section, officers detailed to discharge the duties of the vacant offices or relieved or absent officers may act as members of the auditing board to the extent needed to form a quorum thereof, with the same authority as duly qualified members of the organization would have if present.

Amended by L. 1921, ch. 587, § 11; L. 1924, ch. 114, § 29, in effect April 12, 1924. Many changes.

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§ 218. Allowances for headquarters. On the certificate of the adjutant-general of the state, the comptroller shall, annually, draw his warrant upon the treasurer for the following sums, namely: twelve hundred dollars [1] for each brigade headquarters; fifteen hundred dollars for each regimental headquarters *and for the headquarters of each similar organization;* five hundred dollars for each battalion and squadron headquarters *and for the headquarters of each similar organization;* one hundred dollars additional to naval battalions for each signal division and two hundred and fifty dollars for each engineer division contained therein. For brigade headquarters in brigades covering a territory of more than ten counties, and in counties containing over two million inhabitants, five hundred dollars, and in brigades whose organizations are located in fifteen or more counties, eight hundred dollars additional shall be allowed. For the headquarters of each regiment *and similar organizations* whose [1] *units* are located in more than four counties, an additional one hundred dollars shall be allowed for each county in excess of four, in which a [1] *unit* of such regiment *or similar organization* is stationed. For the headquarters of each separate battalion whose organizations are located in more than two counties, an additional one hundred dollars shall be allowed for each county in excess of two, in which a company organization of such battalion is stationed. [1] The funds thus allowed shall only be expended by the respective commanding officers[1] *of the organizations* to which the fund is allowed on the approval of the adjutant-general of the state.[1]

Amended by L. 1921, ch. 587, § 12, in effect May 5, 1921. Amendment added matter in italics and omitted matter where index figure (1) appears.

§ 219. Allowance for salaries and office expenses of headquarters of the national guard. The commanding general of the national guard shall receive an annual salary equal in amount to the pay and allowances of an officer of like grade in the army of the United States. There shall be allowed annually such sum, not exceeding the amount appropriated therefor, as may be necessary for the salaries of the officers on permanent duty at the headquarters of the national guard and for the office expenses of such headquarters, including printing, stationery, postage, expressage and clerical service. The amount thus allowed shall be expended as the commanding general of the national guard may direct. The necessary traveling expenses and subsistence of the commanding general of the national guard and the officers of his staff when traveling on duty and under orders shall also be allowed. The employees at the headquarters of the national guard shall be considered as being in the military service of the state and shall be subject to military discipline.

Amended by L. 1921, ch. 587, § 13; L. 1924, ch. 114, § 29, in effect April 12, 1924. Section substantially new.

§ 219-a. Retired officers; compensation. An officer of the national guard or naval militia who has been a commissioned officer in active service for at least twenty years, in the national guard or the naval militia of the state of New York or in the army, navy or marine corps of the United States, and who has during fifteen consecutive years of such active service immediately preceding his retirement, or if he has had actual combat experience in time of war while in the army, navy or marine corps of the United States, or if he has served in the national guard or naval militia in active service for at least ten years as an enlisted man and at least thirty years as a commissioned officer, then during ten consecutive years of such active service immediately preceding his retirement, received an annual compensation from the state for performing military or naval duty and who has been dependent on such compensation for his support shall receive annually from the date of his retirement on reaching the age of sixty-four years or upon his own application, or for physical disability and during the time he remains on the retired list seventy-five per centum of the annual compensation paid to him as aforesaid, at the date of his retirement. The time spent in

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the military or naval service of the United States while a state employee shall be counted in computing the time that an officer has received an annual compensation from the state and in computing the period of active service hereunder notwithstanding the fact that such officer may not have received compensation from the state or may not have been an officer of the national guard or naval militia during such period. A commissioned officer of the national guard of the state of New York in active service or upon the state reserve list, who has served in the active national guard of New York and in the federal military service for an aggregate period of twenty-five years, of which period twenty years shall have been as a commissioned officer, and who during such period of service has served as a major general commanding a tactical division in the Army of the United States, made up of units or troops of the New York national guard and which participated under his command in actual combat service in time of war, shall receive annually from funds appropriated for the support of this military establishment of the state or for the national guard and naval militia of the state, from the date of his retirement upon reaching the age of sixty-four years and during the time he remains on the retired list, seventy-five percentum of the annual pay of a major general on the active list of the regular army of the United States. If an officer entitled under this section to be retired and to receive a percentum of his annual compensation dies or within six months prior to the date this act takes effect has died while mustered into the United States service and on duty under a call of the president his widow shall receive from the state annually during her life one-half of the amount which her husband would have received if he had been retired hereunder at the time of his death. And a retired officer of the national guard or naval militia who served actively as a commissioned officer for twenty-five years and who has been employed by the state under compensation for at least fifteen years and who has been dependent on such compensation for his support and who shall have lost both legs, both arms, or the eyesight of both eyes during the period of such state employment shall be retired therefrom and thereafter during his life there shall be paid to him in the same manner and by the same agency and from the same source that the salary or wages of his former position were customarily paid, the sum of one hundred dollars per month.

Amended by L. 1917, ch. 635; L. 1923, ch. 462; L. 1924, ch. 114, § 30; L. 1925, ch. 174; L. 1930, ch. 193; L. 1938, ch. 304, in effect April 1, 1938. Amendment affected third sentence.

Membership in state employees' retirement system, see McKinney's Unconsolidated Law, § 711.

Widow's compensation.—A widow of an officer of the National Guard entitled to be retired but not actually retired is entitled to retirement compensation amounting to one-half of the amount which her husband would have received if he had been retired at the time of his death. (1936) Op.Atty.Gen. 131.

Member of State Employees' Retirement System.—Where an officer entitled to a pension under the Military Law was a member of the State Employees' Retirement System and failed to make an affirmative election to remain a member under subdivision 2 of section 52 of the Civil Service Law, the contributions with accumulated interest should be returned and application for pension under this chapter granted. 1940, Op.Atty.Gen. 183.

§ 220. Pensions. Every member of the active militia who shall be wounded or disabled or has been so disabled in the performance of any actual service of this state within three years preceding the application for a pension under this chapter, in case of riots, tumults, breach of the peace, resistance to process, invasion, insurrection or imminent danger thereof, or whenever called upon in aid of the civil authorities, or while engaged in any lawfully ordered parade, drill, encampment or inspection, shall, upon proof of the fact, as hereafter provided, be placed on the roll of invalid pensioners of the state, and shall receive, out of any

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moneys in the treasury of the state, not otherwise appropriated, upon the audit of the adjutant-general of the state and approval of the governor, the like pension or reward that persons under similar circumstances receive from the United States, and in case of any wound, injury or disease so received or contracted causing death within one year thereafter, then the widow, minor children or dependent mother of such member of the militia shall receive such pension and reward as persons under similar circumstances receive from the United States, provided, that application is made therefor within one year after the date of such death. No officer or enlisted man shall be entitled, while in active service, to make application for or to receive a pension. If any member of the militia shall die while in the active service of the state, his reasonable funeral expenses, not exceeding one hundred dollars, shall be paid by the state in such manner as the governor may direct. Nothing in this chapter contained shall be deemed to make applicable any of the provisions of the war risk insurance law of the United States, and the pension or reward to be granted hereunder shall be that provided for by the pension laws of the United States, so far as the same may be applicable in substance, without regard to form.

Amended by L. 1918, ch. 402; L. 1921, ch. 588, § 43; L. 1923, ch. 461, in effect May 21, 1923. Many changes.

Remedy under section not exclusive.—The remedy under this section and section 223 is not exclusive and one injured in line of duty by the negligence of an officer of the National Guard may pursue the remedy granted him by an enabling act. Schmohl v. State, (1931) 141 Misc. 274, 252 N. Y. S. 474.

The remedy of the administrator of one killed while serving at field manoeuvres of the National Guard under the pension provisions of the Military Law (§§ 220, 223) is not exclusive where the Legislature has granted an enabling act. A letter of the mother of the deceased guardsman to the latter's company commander, appealing for help, is not an application for a pension under the statute. Dicicco v. State, (1934) 152 Misc. 541, 273 N. Y. S. 937.

National Guardsman injured in performance of duty.—It is probable that a member of the National Guard injured while performing a military duty and without fault on his part would be entitled to a pension under this section. Lewis v. State, (1921) 197 App. Div. 712, 189 N. Y. S. 560, affirmed without opinion (1922) 234 N. Y. 587, 138 N. E. 457.

Pension to widow of pensioner.—If a pension is granted to a member of the state militia, under this section, and such pensioner dies, as a result of the injury or disease because of which the pension was granted, then the widow, minor children or dependent mother of the deceased pensioner would not be entitled to any pension. (1923) Op. Atty.-Gen. 168.

Liability of state for negligent vaccination of militiaman.—A motion in the Court of Claims to dismiss a claim against the state for the death of a militiaman which is alleged to have been caused by the improper and negligent treatment given him while being vaccinated by a doctor in charge at a state armory, and which is further alleged to have been due to the impurity and dangerous character of the vaccine, should be granted. The state has by this section and §§ 221–224 provided another tribunal and method for affording relief to the dependents of soldiers who die while in service either from injuries or from illness. McAuliffe v. State, (1919) 107 Misc. 553, 176 N. Y. S. 679.

Election of remedies.—Injured member of National Guard was not restricted to pension provisions of this section, but could elect to prosecute claim against state under Enabling Act. Spence v. State (1936) 159 Misc. 797, 288 N.Y.S. 1009.

Pension under section 19-a.—A person receiving a pension under section 19-a is not entitled to receive another pension under this section at the same time. 1939, Op.Atty.Gen. 130.

Dependent mother.—The words "dependent mother" as used in this section means a mother without other present means of support than her own manual labor or the contributions of others not legally bound for her support. 1940, Op.Atty.Gen. 144.

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This section and 38 U.S.C.A. § 203, should be read together in determining the use intended by the Legislature of the term "dependent mother". 1940, Op.Atty.Gen. 144.

Cited in Dachs v. Ward (1932) 236 App.Div. 174, 258 N.Y.S. 141, motion den (1932) 236 App.Div. 764, 258 N.Y.S. 1007.

§ 222. Pension examiners and examining boards. The adjutant-general of the state is authorized to appoint pension examiners, whose duty it shall be to inquire into the merits of any claim for pay and care and pension, whether pending or adjudicated, and any person so appointed shall have power to administer oaths, to orally examine witnesses, to issue subpoenas, and to take affidavits and depositions in the course of such examinations. The adjutant-general of the state shall further appoint examining boards, consisting of not more than three medical officers of the national guard or naval militia, who shall under his direction make such examination of claimants as he shall require, and certify the result in such form as he shall prescribe, and any person adversely affected by the report of one medical officer shall be entitled to an examination upon his request before a board consisting of three medical *men. The adjutant-general, with the approval of the governor and with the consent of the applicant, may commute any pension by payment of a lump sum to be accepted by the applicant in full satisfaction of all claims.*

Amended by L. 1919, ch. 243, in effect April 15, 1919. Amendment inserted matter in italics.

§ 223. Pay and care when injured or disabled in service A member of the national guard or naval milita who shall, when on duty or assembled therefor, in case of riot, tumult, breach of peace, insurrection or invasion, or whenever ordered by the governor, the commanding general of the national guard, or the commanding officer of the naval militia, or called in aid of civil authorities, receive any injury, or incur or contract any disability or disease, by reason of such duty or assembly therefor, or who shall without fault or neglect on his part be wounded or disabled while performing any lawfully ordered duty, which shall incapacitate him from pursuing his usual business or occupation, shall receive the pay provided by this chapter and actual necessary expenses for care and medical attendance during the period of such incapacity not exceeding ninety days from the date of receiving the injury or of incurring or contracting the disease or disability, except that, if authority therefor is granted by the adjutant-general of the state, expenses for care and medical attendance may be allowed for an additional period, within one year from the date when the injury was received or the disease or disability was incurred or contracted, of not to exceed two hundred days. Where a claim is made under this section the adjutant-general of the state may cause examinations of the claimant to be made from time to time by a medical officer or officers designated for the purpose by the adjutant-general of the state, and he may direct the removal of a claimant to, and his treatment in, an hospital designated by the adjutant-general of the state, and if the claimant refuse to permit any such examination or if he refuse to go to such hospital or to follow the advice given or treatment prescribed for him therein, he shall thereby forfeit and be barred from all right to any claim or allowance under this section. The adjutant-general of the state may appoint a medical examiner or a board of three officers, at least one being a medical officer, to inquire into the merits of any claim arising under this section, or he may, in his discretion, determine any claim without appointing a medical examiner or board and fix the amount to be allowed under this section. A medical examiner or board appointed under this section shall have the same power to take evidence, administer oaths, issue subpoenas and compel witnesses to attend and testify and produce books and papers and punish their failure to do so, as is possessed by a general court martial. The findings of the medical examiner or board shall be subject

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to the approval of the adjutant-general of the state, who may return the proceedings of the medical examiner or board for revision and for taking further testimony. The amount found due such member by the adjutant-general of the state or by said medical examiner or board to the extent that the findings are approved by the adjutant-general of the state, shall be a charge against and be paid in the manner provided by this chapter, by the county or city in which such duty was rendered, in every case where a county or city is by this chapter made liable to pay for the performance of military duty. In all other cases such sums shall be paid by this state, in like manner as other military accounts are paid. A claim shall not be allowed under this section unless the same is presented to the adjutant-general of the state within one year from the date of receiving the injury or incurring or contracting the disease or disability on which the same is based. Pay and expenses for care and medical attendance shall not be allowed under this section for any period during which a member of the national guard or naval militia is entitled to receive pay and hospital treatment as a charge against federal funds.

Amended by L. 1921, ch. 588, § 44; L. 1923, ch. 461; L. 1924, ch. 114, § 31, in effect April 12, 1924. Many changes.

Remedy under section not exclusive, see Schmohl v. State, (1931) 141 Misc. 274, 252 N. Y. S. 474; Dicicco v. State, (1934) 152 Misc. 541, 273 N. Y. S. 937, both more fully annotated under section 220, supra.

Expenses of operation.—Payment of expenses of an operation performed more than ninety days after injury is not authorized under this section. (1923) Op. Atty Gen. 146.

§ 225. **Reports of county treasurers; bonds for military funds; funds of disbanded organizations.** Each county treasurer shall report on the first day of March and September of each year, to the adjutant-general of the state, the amount of all moneys received and paid out by him on account of and the amount remaining in his hands to the credit of each military or naval organization.[1] The bond now required by law to be given by county treasurers for the faithful discharge of their duties, shall be held to apply to any moneys that may come into their hands under the provisions of this chapter, but no fees or commissions on any such moneys shall be charged, received or retained by any county treasurer. The adjutant-general of the state is hereby authorized and empowered to draw, use and apply to the benefit of the national guard and naval militia *and of troops from the state of New York in the military or naval service of the United States* any and all moneys and balances remaining in the hands of the several county treasurers of the state, to the credit of any military or naval organization[1] which has been disbanded, or to pay audited bills of disbanded military or naval organizations[2] from such funds, or from unexpended national guard or naval militia appropriations where balances remain. The several county treasurers of this state are authorized and directed to pay to the adjutant-general of the state, upon his order, all moneys remaining in their hands to the credit of any disbanded military or naval organization.[2] The certificate of the adjutant-general of the state shall be sufficient evidence of the disbandment of any such military or naval organization.[1] The use or appropriation by a county treasurer of any money belonging to the military fund of a military or naval organization[1] to any other use or purpose different from that authorized by this chapter, shall constitute the crime of larceny and be punished accordingly.

Amended by L. 1921, ch. 588, § 45; L. 1924, ch. 114, § 32, in effect April 12, 1924. Matter in italics new. Omissions: [1] "corps or artillery district." [2] "corps or artillery districts."

§ 226. **Interest on military funds in the hands of the treasurer of the city of New York or the several county treasurers of the state**

Any moneys which may have accrued, or which may hereafter accrue, and be on deposit with the treasurer of the city of New York, or with

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the treasurer of any county, as interest upon moneys constituting the military fund of the state, or of military or naval organizations, located in the respective counties, shall, except as otherwise provided in this chapter, be subject to the draft of the adjutant-general of the state, and shall be expended by him for the use and benefit, of the national guard or naval militia of the state and of troops from the state of New York in the military or naval service of the United States under draft, call or voluntary enlistment. As amended L.1921, c. 588, § 46; L.1924, c. 114, § 33; L.1941, c. 655, § 10, eff. April 22, 1941.

L.1941, c. 655, § 10, eff. April 22, 1941, substituted "treasurer" for "chamberlain" in catchline and section.

See Note of Commission under section 185.

ARTICLE 11

Privileges, Prohibitions and Penalties

Sec.

246. Provisions applicable to public employees who are absent on military duty [New].
246-a. Members of pension system absent on military duty [New].
247. Conspicuous service cross [New].
249. State and municipal officers and employees granted leaves of absence on July fourth in certain cases [New].

§ 235. Exemption from civil process.

Member of Veteran Corps of Artillery.— The Veteran Corps of Artillery of the state of New York is neither a part of the national guard nor of the naval militia, and a member of said corps who has given a bond for the jail limits is not entitled to be discharged from custody on the ground that he is exempt from arrest by reason of being in the military service of the state. Andrews v. Gardiner, (1917) 100 Misc. 622, 166 N. Y. S. 933, affirmed (1918) 185 App. Div. 477, 173 N. Y. S. 1.

§ 237. Free passage through toll-gates and over toll-bridges and certain ferries. Any person belonging to the military or naval forces of the state or of the United States shall, together with his conveyance and the military property of the state or of the United States in his charge, be allowed to pass free through all toll-gates and over all toll-bridges and also over all ferries if he is in uniform or presents an order for duty or certificate of membership in the military or naval service of the state or of the United States. The provisions of this section so far as they relate to the military or naval forces of the United States shall apply only during periods when the United States is at war.

Amended by L. 1918, ch. 244; L. 1919, ch. 113; L. 1924, ch. 114, § 34, in effect April 12, 1924. Numerous changes.

Officers and enlisted men entitled to free passage, see Op. Atty.-Gen., (1925) 35 St. Dept. 112.

Existence of actual duty essential to free passage.—The right of free passage through toll gates applies to all members of military forces of the United States in time of war when in uniform, although not performing any assigned military task. Feb. 2, 1943, Op.Atty.Gen.

Persons in the military and naval service of the State, not on actual duty are not entitled to free passage over the Mid-Hudson bridge. Op. Atty.-Gen., (1933) 48 St.Dept. 428.

Free passage over Mid-Hudson bridge allowed under this section, see Op. Atty.-Gen., (1933) 48 St. Dept. 392.

New York Guard.—Members of New York Guard are part of military forces of the State and are entitled to free passage through Queens Midtown Tunnel under this section. Penalty for refusal of passage under Penal Law, § 1486, would not apply, however, since that section is applicable in terms only to national guardsmen. March 25, 1941, Op. Atty.Gen.; April 8, 1941, Op.Atty.Gen.

State forces in Federal service.—Members of the New York National Guard who have been inducted into Federal service are considered forces

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of the United States and are subject to tolls until the United States is at war. Oct. 7, 1941, Op.Atty.Gen.

National emergency.—The proclamation of an unlimited national emergency does not require the New York State Bridge Authority to afford free passage to troops of the United States over its bridges, since the United States is still not at war. Oct. 7, 1941, Op.Atty.Gen.

State officers and employees.—State officers and employees have not been granted exemption from the payment of tolls on Bear Mountain Bridge. 1940, Op.Atty. 147.

§ 238. Exemption from jury duty. Every member of the active militia shall be exempt from all jury duty, provided he shall furnish the certificate of his immediate commanding officer that he has performed the duties required of him for the year immediately preceding a summons to act as a juryman or during the period of his service if less than one year. And every such member who shall have served five years and shall have received one or more honorable discharges covering that entire period, shall be exempt forever after from all jury duty. The words "all jury duty" as used in this section shall include coroners' juries.

Amended by L. 1921, ch. 588, § 47, in effect May 5, 1921. Amendment affected second sentence.

Construction with Judiciary Law § 635.—An honorably discharged veteran of the National Guard after more than five years' service was not entitled to the removal of his name from the list of jurors and to the placing of his name upon a list of persons permanently exempt from jury duty. Curtis v. Watson, 1938, 168 Misc. 246, 5 N.Y.S.2d 562, affirmed 1938, 254 App.Div. 861, 5 N.Y.S.2d 563, certiorari denied, 1939, 59 S. Ct. 834, 307 U.S. 630, 83 L.Ed. 1513.

This section insofar as trial jury duty is concerned, is superseded and repealed by section 635 of the Judiciary Law, as amended by L.1936, c. 890. 1936, Op.Atty.Gen. 345.

§ 240. Trespassers and disturbers to be placed in arrest; sales prohibited. The commanding officer upon any occasion of duty may place in arrest during the continuance thereof any person who shall trespass upon the camp ground, parade ground, armory or other place devoted to such duty, or shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to or returning from any duty.

He may prohibit and prevent the holding of huckster or auction sales, and all gambling within the limits of the post, camp ground, place of encampment, parade or drill under his command or within such limits not exceeding one mile therefrom as he may prescribe. And he may in his discretion abate as common nuisances all such sales.

Amended by L. 1924, ch. 114, § 35, in effect April 12, 1924.

§ 241. Military parades and organizations by unauthorized bodies prohibited.

Organization of local guards under Membership Corporations Law.—A membership corporation cannot be formed for "the purpose of organizing, equipping and maintaining a voluntary local guard of citizen soldiers . . . subject at all times to the laws and general rules and regulations of the United States and of the state of New York." Matter of Long Beach Defense Guards, (1917) 100 Misc. 584, 166 N. Y. S. 450.

Purpose.—Purpose of this section appears to be to prevent interference with the availability, organization and control of the militia of the State and to keep military force out of the hands of lawless, irresponsible, subversive and hostile elements. Feb. 19, 1941, Op.Atty.Gen.

Local military organizations.—The formation of military organizations apart from active militia or United States troops is forbidden by this section. Military authority is of State and not local concern and local governmental subdivisions have no authority to appropriate money for military purposes in absence of express legislative authority. Feb. 19, 1941, Op.Atty.Gen.

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§ 242. Separate companies and separate divisions. The words "separate company," or "separate division," whenever used in this chapter, shall be construed to apply to and mean separate companies or separate divisions existing, organized and recognized by the governor as such on April second, eighteen hundred and ninety-eight, irrespective of their being now or hereafter part of a regiment or battalion, *or other similar organization,* and to such similar [1] *units* as may have been since or may be hereafter created, and as may be certified by the adjutant-general of the state to be separate companies, *separate units* or separate divisions within the meaning of this section, irrespective of their being or becoming parts of a regiment or battalion, *or other similar organization.*

Amended by L. 1921, ch. 588, § 48, in effect May 5, 1921. Amendment added matter in italics and omitted [1] "organizations."

§ 244. Devises and bequests. A regiment, battalion or squadron, a company, troop, battery, division, company of the signal corps, field hospital, detachment of the hospital corps attached to a regiment, battalion or squadron and each unit not hereinbefore mentioned into which the national guard and naval militia may be divided for organization or administrative purposes, may take by devise and bequest real and personal estate for its uses and purposes as a military organization, and may hold, mortgage, sell or otherwise dispose of the same. The title to such property shall vest in the commissioned officer or officers of the organization and if there be three or more of such officers the property shall be managed by their majority vote and disposed of by their two-thirds vote. Organizations of the veterans of such units and/or their predecessor units in the organized militia of the state, in cases where the designation of the corresponding unit in the active militia has been changed by proper authority, incorporated under general laws or special charter of the state, as associations of the veterans of such units now or as heretofore constituted and designated, shall, in addition to the powers and authority heretofore granted, possess the same authority herein granted to each unit not hereinbefore mentioned into which the national guard and naval militia may be divided for organization or administrative purposes, to take by devise and bequest real and personal property for the appropriate uses and purposes of such organizations and associations and may hold, mortgage, sell or otherwise dispose of the same, and use and apply the proceeds thereof and the income thereof to its appropriate purposes. The title to such property shall vest in such corporations and shall be managed and/or disposed of as provided in and by the constitution, by-laws, rules and regulations now in force or hereafter adopted in respect thereto.

Amended by L. 1932, ch. 272, § 6, in effect March 18, 1932. Amendment added sentence at end of section.

§ 245. State and municipal officers and employees absent on military or naval duty.

1. Every officer and employee of the state or of a municipal corporation or of any other political subdivision thereof who is on or before the date this subdivision as hereby amended takes effect a member of the national guard or naval militia, or a member of the reserve corps or force in the federal military, naval or marine service, shall be entitled to absent himself from his duties or service while engaged in the performance of ordered military or naval duty, and while going to and returning from such duty. Notwithstanding the provisions of any general, special or local law or the provisions of any city charter, no such officer or employee shall be subjected by any person whatever directly or indirectly by reason of such absence to any loss or diminution of vacation or holiday privilege or be prejudiced by reason of such absence with reference to promotion or continuance in office or employment or to reappointment to office or to re-employment. During the absence of any such officer or employee, while engaged in the performance

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of ordered military or naval duty as a member of the national guard or naval militia, or as a member of the reserve corps or force in the federal military, naval or marine service, he shall receive his salary or compensation as such officer or employee, provided the period of such absence in any calendar year does not exceed thirty days. If the period of such absence in any calendar year exceeds thirty days he shall receive for the period of absence in excess of thirty days such part of his salary or compensation as such officer or employee as equals the excess, if any, of such salary or compensation paid to him for the performance of such duty. This section shall not apply to any officer or employee inducted into military or naval service pursuant to the federal selective service act [1] of nineteen hundred forty, or any amendment thereto, nor to any officer or employee, so inducted, who is discharged from, and thereafter recalled to, active service.

2. The terms "officer and employee" as used in this section shall include every person by whatsoever title, description or designation known who receives any pay, salary or compensation of any kind from the state or a municipal corporation or of any other political subdivision thereof, or who is in any department of the state, but shall not include a person holding a position in the exempt class of the civil service whose appointment is terminated or whose position is filled by other than a substitute appointee.

3. Wherever during the absence of an officer or employee of the state or of a municipal corporation or of any other political subdivision thereof in the performance of military or naval duty in the service of the United States, examinations for promotion, in which he was entitled to participate, shall have been held or promotions to positions, to which he would have become eligible upon qualifying at such examinations, shall have been made, he shall be given an examination, alone or with others in the same department similarly situated, for advancement to the highest grade for which such examinations were held or such promotions were made during his absence and, upon passing such examination, he or any person who while in the military or naval service of the United States took and passed such examination, or any person who took and passed such examination and thereafter entered the military or naval service of the United States, shall be placed upon the eligible list of such grade, his salary shall be fixed at the medium amount prescribed for such grade and he shall be preferred for any appointment or promotion thereafter made in such grade in the department in which he shall be employed. Whenever the position held is in the classified service and is ungraded, and when either a new appointment was made at a larger salary or an increase in salary was given to another during his absence on military or naval duty in the service of the United States, his salary shall be fixed at not less than the medium amount as determined by the salaries actually being paid others having the same position or title. No person shall be given a preference hereunder over an honorably discharged soldier, sailor or marine who served as such in the army or navy of the United States in the late civil war, or in the late war with Spain, or during the incidental insurrection in the Philippines prior to July fourth, nineteen hundred and two, or in the world war.

4 and 5. Repealed.

6. Renumbered 2.

7. Repealed.

8. An officer or employee of the state who entered the federal military, naval or marine service subsequent to April sixth, nineteen hundred and seventeen, without the consent of the governor as required by this section or by chapter four hundred and thirty-five of the laws of nineteen hundred and seventeen, and who at the time of such entrance shall have been continuously in the service of the state from the time of the declaration of war to such entrance and who shall have been honorably discharged from such service, shall be entitled to the rights and privileges conferred

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by this section in the same manner and to the same extent as though he had procured the consent of the governor to enter the federal service and shall be paid such part of the salary or compensation which he would have received as such officer or employee in excess of the compensation paid to him for the performance of his duty in the military, naval or marine service described in this section, notwithstanding his failure to procure such consent of the governor. As amended L.1917, c. 435, § 1; L.1919, c. 241; L.1920, c. 248; L.1920, cc. 282, 624, 630; L.1921, c. 588, § 49; L.1923, c. 458; L.1936, c. 185; L.1940, c. 804; L.1942, c. 255, § 1; L.1943, c. 341, eff. April 7, 1943.

[1] See 50 U.S.C.A.App. § 301 et seq.

Subd. 1 was so numbered by L.1917, c. 435, § 1, and amended by L.1923, c. 458; L.1936, c. 185, eff. March 28, 1936; L.1942, c. 255, eff. April 1, 1942; L.1942, c. 727, eff. May 8, 1942. L.1942, c. 255 inserted "on or before * * * takes effect," in first sentence. L.1942, c. 727, added last sentence.

Subd. 1-a, as added by L.1940, c. 804, was renumbered section 249.

Subd. 2, formerly subd. 6 as added by L.1917, c. 435, § 1, was renumbered 2 by L.1920, c. 624, § 3 and amended by L.1943, c. 341, eff. April 7, 1943. L.1943 added "but shall * * * substitute appointee." Former subd. 2 as added by L.1917, c. 435, § 1, was repealed by L.1920, c. 624, eff. May 10, 1920.

Subd. 3 was added by L.1921, c. 589, eff. May 5, 1921. Former subd. 3 as added by L.1917, c. 435, § 1, was repealed by L.1920, c. 624, § 2, eff. May 10, 1920.

Subds. 4 and 5 as added by L.1917, c. 435, § 1, were repealed by L.1920, c. 624, § 2, eff. May 10, 1920.

Subd. 6 was renumbered 2.

Subd. 7 as added by L.1919, c. 241, and amended by L.1920, c. 282, was repealed by L.1920, c. 624, § 2, eff. May 10, 1920.

Subd. 8 as added by L.1920, cc. 248 and 630, latter without reference to former, was amended by L.1921, c. 590, eff. May 5, 1921.

Governor's Memorandums. On approving L.1943, c. 341, the governor stated:

"This bill concerning military leaves of absence, is merely a clarification of existing law and affects exempt employees only.

"Under the present rulings and practice with respect to both state and municipal positions, the term 'officer or employee' entitled to differential pay under Section 245 of the Military Law, does not include a person holding a position in the exempt class whose position has been filled by a permanent appointee. This bill incorporates this practice into law."—Approved April 7, 1943.

On approving L.1943, c. 342, the governor stated:

"This bill affects exempt employees only. The amendment to the statute providing for military leaves of absence is a clarification of existing law.

"The amendment makes clear that the position of a public employee may be preserved for him when a temporary substitute, rather than a permanent successor, is appointed to fill his position."—Approved April 7, 1943.

Overtime compensation as not entitling additional compensation under this section, see Labor Law, § 168-a.

Temporary increase of compensation as not entitling increase under this section, see Civil Service Law, § 40, notes.

District attorneys entering military or naval service of United States, see County Law, § 203-a.

Temporary appointments to fill certain vacancies resulting from performance of military or naval duties, see section 62-b of Public Officers Law.

Constitutionality.—The provision of subd. 1 requiring that an employee of a state or political subdivision be paid his salary as such during absence on military or naval duty is not violative of prohibition of Constitution, art. 8, §§ 1, 2 against "gifts" of county money to an individual or creation of an indebtedness for other than "county purposes", as applied to county from which investigator for Department of Public Welfare sought to recover salary for first 30 days after he was called as a reserve officer into federal military service, though there was no guarantee that he would return to his position at end of his military or naval duty. Hoyt v. Broome County, 1941, 285 N.Y. 402, 34 N.E.2d 481, 134 A.L.R. 916, reversing 175 Misc. 896, 25 N.Y.S.2d 527.

The provision of subd. 1 permitting officers and employees of a state, or political subdivision, to absent themselves for military or naval duty

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invokes the provisions of Constitution, art. 5, § 6, devised to secure continuance in public service of those found competent to discharge the duties thereof. Hoyt v. Broome County, 1941, 285 N.Y. 402, 34 N.E.2d 481, 134 A.L.R. 916, reversing 175 Misc. 896, 25 N.Y.S.2d 527.

This section, which has a reasonable relation to object of the provisions of Constitution, art. 5, § 6, devised to secure continuance in public service of those found competent to discharge the duties thereof is basically valid though it may also foster war service to the nation or some other legitimate object which in itself would not constitute a state or municipal purpose. Hoyt v. Broome County, 1941, 285 N.Y. 402, 34 N.E.2d 481, 134 A.L.R. 916, reversing 175 Misc. 896, 25 N.Y.S.2d 527.

This section as amended by L.1917, ch. 435, providing that during the absence of an employee of a municipal corporation in the performance of duty in the federal military service "he shall receive such part of his salary or compensation as such officer or employee as equals the excess, if any, of such salary or compensation over the compensation paid to him for the performance of such duty," does not violate section 1 of the 14th Amendment of the Federal Constitution, in that it confers an advantage upon a selected class. Nor does said provision violate section 10 of article 8 of the state constitution, in that it requires the city to make to the employee a gift, and that, too, for something which is not all a city purpose. Nor does it violate section 28 of article 3 of the state constitution because it requires the city to grant to an employee extra compensation. Henn v. Mt. Vernon, (1921) 198. App. Div. 152, 189 N. Y. S. 851.

Former subdivision 7 as amended by L. 1920, ch. 282, but repealed by L. 1920, ch. 624, provided that the entrance into the military or naval service of the United States should give a preference in promotion to officers and employees in the civil service of the state and of its civil subdivisions, ignored the limitations of section 9, article 5 of the constitution and was held to be unconstitutional in Barthelmess v. Cukor, (1921) 231 N. Y. 435, 132 N. E. 140, reversing (1920) 194 App. Div. 359, 185 N. Y. S. 191, and distinguishing People v. Mosher, (1900) 163 N. Y. 32, 57 N. E. 88, 79 A. S. R. 552.

Construction with section 246.—Section 246 deals only with protecting the employment status, rights and benefits of all public employees in military service. It does not affect salary payments to reservists under this section except as provided in subd. 6 of section 246. Nov. 17, 1941, Op.Atty.Gen.

Application of section generally.—Employees of this State, who by membership in the National Guard of other States become members of the National Guard of the United States, are members of a reserve force in the Federal military service and are entitled to salary under this section when ordered into active service of the United States as such. Jan. 7, 1942, Op.Atty.Gen.

For discussion of what constitutes membership in reserve forces and ordered military duty, see Nov. 17, 1941, Op.Atty.Gen.

The application of this section is dependent upon public employment and not upon the particular budgetary or fiscal method of providing compensation therefor. Jan. 15, 1941, Op.Atty.Gen.

Employees who join units of the National Guard after issuance of orders for their induction into Federal service are entitled to the benefits of this section. 1940, Op.Atty.Gen. 227.

Value of maintenance while on military service should not be considered in determining amount of military compensation. But the compensation of those State employees who receive a maintenance allowance from the State should include the value thereof. 1940, Op.Atty.Gen. 227; Mar. 4, 1941, Op.Atty.Gen.

Compensation under this section is payable out of sources from which compensation of the employee is usually derived. 1940, Op.Atty.Gen. 227.

This section includes all public employees who receive compensation in any manner from any of the designated governmental agencies, including authorities and commissions such as the State Insurance Fund, the Employees Retirement System, the Niagara Frontier Bridge Commission, the Power Authority, the Saratoga Springs Authority, etc. 1940, Op.Atty.Gen. 227.

Under this section, an employee called into Federal service may receive full pay for only thirty days in any calendar year. Sept. 10, and 1940, Op.Atty.Gen. 227.

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State officers and employees, who are members of the National Guard, Naval Militia, or Reserve Corps and who are called into Federal service, are entitled to receive from the State during such service full pay for the first thirty days and thereafter the difference, if any, between their compensation for such military service and their compensation as State officers or employees. 1940, Op.Atty.Gen. 214, 227.

This section applies not only to the employees of the state, but to the employees of every city, county, town, village, school district, fire and lighting district within the state. If the excess of civil over military pay is less than twenty-five dollars per month, such employees are entitled under this section to receive the full sum of twenty-five dollars per month; but an officer or employee is not entitled to receive anything from the state if his civil service wages or salary is less than his military compensation. Op.Atty.Gen., 1917, 12 St.Dept.Rep. 473.

This section applies to temporary employees in the noncompetitive and exempt class of the civil service. Op. Atty.-Gen., (1925) 35 St. Dept. 274.

Application to school teacher.— The provisions of this section, as amended by L. 1917, ch. 435, are binding upon the board of education of a school district and entitle a teacher, who has been drafted into active military service after entering into a contract with the board, to recover the difference in salary between his army pay and his salary as a teacher under the contract. Op. Education Dept., (1920) 22 St. Dept. Rep. 303.

Application to workers on T. E. R. A. projects.—This section does not apply to workers on Temporary Emergency Relief Administration projects. (1934) Op. Atty. Gen. 83.

"For a period of two months thereafter."—The provision of this section that a civil employee shall not be prejudiced "during the period of the present war and for a period of two months thereafter" by reason of his absence, does not mean that a man shall not be prejudiced for two months after his absence terminates, nor does it mean that he may claim the benefit of the provision without reporting for duty for two months after his discharge from the army. It merely extends the protection of the section to the length of his stay in the army, up to two months after the end of the war. The exact time within which an employee should return to his position after his discharge from the army should be decided by each department head with due regard to the circumstances of the particular case. Op. Atty.-Gen., (1919) 18 St. Dept. Rep. 465.

Tranafer from one department to another as affecting employee's rights.— A state officer or employee who had been in the state service for at least one year immediately prior to entering military service is entitled to the rights and privileges conferred by this section, regardless of the fact that he may have been transferred from one state department to another within a year prior to entering military service. Op. Atty.-Gen.., (1920) 24 St. Dept. Rep. 208.

Military salary or compensation.—Under this section "salary or compensation" for military service of army officer, who was formerly medical superintendent of city hospital, meant regular army officer's "pay" as distinguished from "allowances" in substitution for subsistence, quarters and like military essentials usually supplied by the government in kind, and value of maintenance furnished officer and his family by city while he was medical superintendent was part of his "salary or compensation" as an employee of city. Kogel v. McGoldrick, 1942, 289 N.Y. 318, 45 N.E.2d 817, reversing 264 App.Div. 898, 35 N.Y.S.2d 916, modifying 178 Misc. 105, 33 N.Y.S.2d 122.

In computing the excess of civil over military salary or compensation for purpose of determining the amount due a state or municipal officer under subdivision 1, the compensation for performance of military duty is confined to the amount paid to the officer for performance of such duty. Kogel v. McGoldrick, 1942, 178 Misc. 105, 33 N.Y.S.2d 122, modified, 1942, 264 App.Div. 898, 35 N.Y.S.2d 916, reversed on other grounds, 1942, 289 N.Y. 318, 45 N.E.2d 817.

Allowances or commutations paid to an officer in armed service of the United States are in nature of reimbursements for expenditures made for convenience of the government's military establishment and are not additional "compensation" for services rendered by the officer, in determining the amount of pay differential to which a city employee absent on ordered military service is entitled. Kogel v. McGoldrick, 1942, 178

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Misc. 105, 33 N.Y.S.2d 122, modified, 1942, 264 App.Div. 898, 35 N.Y.S.2d 916, reversed on other grounds, 1942, 289 N.Y. 318, 45 N.E.2d 817.

The allowances for quarters and subsistence received from the United States by medical superintendent of city hospital as a Major in the United States Army do not constitute "salary or compensation", "paid" for the performance of military duty so as to affect pay differential to which superintendent was entitled under subdivision 1. Kogel v. McGoldrick, 1942, 178 Misc. 105, 33 N.Y.S.2d 122, modified, 1942, 264 App.Div. 898, 35 N.Y.S.2d 916, reversed on other grounds, 1942, 289 N.Y. 318, 45 N.E. 2d 817.

In determining the amount of excess salary due a municipal employee over the amount of compensation received as a member of the federal military service, he should not be charged with the aggregate value of the rations and clothing which he received from the national government while in its service. Henn v. Mt. Vernon, 1921, 198 App.Div. 152, 189 N.Y.S. 851.

In computing the excess of civil over military pay for the purposes of this section, family allowances should not be considered as part of the compensation paid to a man for military service and should not be deducted. Op.Atty.Gen., 1918, 15 St.Dept.Rep. 543.

Increases of salary.—Bonus provided for enlisted personnel under Service Extension Act should be included as military salary in computing differential under this section. Nov. 17, 1941, Op.Atty.Gen.

State employees in military service who receive compensation under this section are entitled to the benefit of the increase of salary provided for by L.1918, ch. 556. The rule applies where two or more men, because of military service, are receiving compensation under this section for the same civil position. Op. Atty-Gen. (1918) 16 St. Dept. Rep. 353.

Diminution of vacation or holiday privileges.—The provision of this section against diminution of vacation or holiday privileges does not mean that a civil employee is considered as saving up and accumulating his vacation and holiday time, during all his military service, for the purpose of claiming it all after his return. He will be considered as having had normal vacations and holidays, by furlough while in military service, to take care of his current rights. The statute protects him against diminution of holidays or vacations after his return, because of time lost during his absence. Op. Atty.-Gen., (1919) 18 St. Dept. Rep. 465.

Consent of governor to enlistment.—A principal of a town school is an employee of a political subdivision of the state within the meaning of subdivision 4 of this section, and if he enlists without the consent of the governor he is not entitled to the difference in compensation between the sum he would have received as principal and the sum he is receiving in military service. Op. Education Department, (1919) 18 St. Dept. Rep. 431.

Subdivision 8.— Chapters 248 and 630 of the Laws of 1920 each added a new subdivision 8 to this section. The two new subdivisions being inconsistent, the later one must be deemed to repeal the former. Op. Atty.-Gen., (1920) 23 St. Dept. Rep. 367.

Protection of rights of municipal employee.—A municipal employee who is a member of the National Guard or Naval Militia, etc., is entitled to all the rights given under this section and he may protect those rights by means of appropriate legal action. Op. Atty. Gen. (1933) 106.

F. E. R. A. employees.—An employee of the State Transit Commission must be paid his salary during his absence on required military duty not exceeding thirty days in one calendar year although such employee is engaged on a project authorized and financed by Federal funds under the Federal Emergency Relief Appropriation Act of 1935. (1936) Op.Atty. Gen. 324.

Length of absence.—Employee who, having had twenty-nine days absence with full pay, was called again in same calendar year would be entitled to only one day's full pay. If, however, his second period of absence commenced in a new calendar year, his right to thirty days' full pay would not be affected by his prior absence. Feb. 8, 1941, Op.Atty. Gen.

Under this section, absence from employment during performance of ordered military or naval duty is not otherwise limited as to time, but where continuous absence extends into another calendar, employee is

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not allowed a second thirty-day full pay period. Jan. 15, 1941, Op.Atty. Gen.

Voluntary enlistment.—This section overrides any departmental regulation tending to diminish the granted privileges and hence two firemen, civil service employees of New York City, who had voluntarily enlisted in the Marine Corps and Naval Reserves and on being ordered to active duty were carried on departmental records as "absent without leave" and "absent for military duty without pay during such absence", respectively, were entitled to have their official records show that they were absent in accordance with and were fully protected by this chapter. Roper v. Walsh, 1942, 264 App.Div. 325, 35 N.Y.S.2d 553, affirmed, 1942, 43 N.E.2d 528, motion granted, 1942, 289 N.Y. 647, 44 N.E.2d 621.

The acceptance by National Guard recruiting officer of application for enlistment of village policeman who was ineligible to National Guard service under military regulations making police officers ineligible to enlistment was tantamount to a "resignation" as a policeman and prevented recovery by policeman from village under this section of the difference between salary and service pay while in active service. Stevens v. Village of Endicott, 1942, 264 App.Div. 4, 34 N.Y.S.2d 438, affirmed, 1942, 289 N.Y. 655, 45 N.E.2d 166, reargument denied, 1943, 289 N.Y. 760, 46 N.E.2d 361.

This section does not apply to employees assigned to active duty as Army Reserve Nurses since the War Department makes such assignments only on a voluntary basis. Feb. 5, 1941 and Jan. 28, 1941, Op.Atty.Gen.

Reenlistment by State employee after induction into Federal Service with the National Guard and after such enlistment under orders has expired constitutes volunteering for active service in the United States Army and is not protected by this section. Tenure in the Civil Service in such case could be protected only by obtaining leave of absence. Jan. 23, 1941, Op.Atty.Gen.; Nov. 17, 1941, Op.Atty.Gen.

Term of office.—The appointment of a successor to the secretary to the Governor, a reserve officer, while he was on duty with the armed forces of the United States, terminated his incumbency of the position and ended his right to salary payments under this section. March 16, 1943, Op.Atty.Gen.

Provisional or temporary employees may properly be paid only for such periods as they would have remained in State service apart from any cause connected with absence on military duty. The same rule applies to those whose employment would normally have terminated by such circumstances as expiration of term of office, abolition of position, or otherwise. 1940, Op.Atty.Gen. 227.

Vacations.—Payment of full salary may not be made during absence on military duty on account of vacation allowance. Mar. 4, 1941, Op.Atty. Gen.

This section does not warrant the payment of salary to an employee during military absence on account of time allowed for vacation. The effect of the provision of this section concerning vacations is to prevent charging military absence against time allowed for vacation. 1940, Op. Atty.Gen. 148.

Season employees.—Season employees in competitive class are entitled to receive pay under this section until the end of the season and to resumption of pay at the beginning of the next season, but not between seasons. Non-competitive or exempt seasonal employees are entitled to such pay only to the end of the current operating season. Jan. 15, 1941, Op.Atty.Gen.

Reserve officers.—Reserve officers ordered to active military duty under National Guard Act of 1940, Pub.Res. No. 96, are entitled to protection of this section, since such orders do not depend upon consent. Any other order for service in excess of 15 days is for voluntary service and is not within this section. Feb. 14, 1941, Op.Atty.Gen.

Retirement System, deductions for.—Deductions from salary payments for the Employees Retirement System should continue to be made on same basis during military absence. Mar. 4, 1941, Op.Atty.Gen.

Ordered military duty, what constitutes.—For discussion of what constitutes ordered military duty within this section, see Nov. 17, 1941, Op. Atty.Gen.

Reserve force membership, what constitutes.—Where deputy sheriff was inducted into military service under Selective Training and Service Act of 1940, 50 U.S.C.A.Appendix, § 301, et seq., transferred to Enlisted Reserve

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Corps, 10 U.S.C.A. § 421, and subsequently recalled to active duty, all of which was involuntary, deputy sheriff was not entitled to salary benefits under provision of this section for payment of salary to member of reserve corps or force in federal military service while undergoing ordered military service, since "reserve corps or force" as used in this section referred to former "enlisted reserve corps" which was entirely voluntary, which in 1941 described a class composed of both voluntary and involuntary members. Murphy v. Westchester County, 1942, 265 App.Div. 162, 38 N.Y.S.2d 184, reversing 36 N.Y.S.2d 71.

Where Congress repealed 34 U.S.C.A. §§ 751, 752, 753, providing for Naval and Marine Corps Reserves while provisions of Military Law, § 245, granting employees of municipalities on ordered military duty leaves of absence compensation, and certain privileges was in effect and reorganized the Naval and Marine Corps Reserves, the composition thereof remaining the same as under said repealed sections and the legislature amended this section to limit special privileges thereof to employees who were in the reserve on or before April 1, 1942, firemen, civil service employees of New York City who had voluntarily enlisted in the Marine Corps and Naval Reserves prior to April 1, on being ordered to active duty, were on "ordered military or naval duty" within this section. Roper v. Walsh, 1942, 264 App.Div. 325, 35 N.Y.S.2d 553, affirmed, 1942, 43 N.E.2d 528, motion granted, 1942, 289 N.Y. 647, 44 N.E.2d 621.

Employees of this State, who by membership in the National Guard of other States become members of the National Guard of the United States, are members of a reserve force in the Federal military service and are entitled to salary under this section when ordered into active service of the United States as such. Jan. 7, 1942, Op.Atty.Gen.

For exhaustive discussion of what constitutes membership in reserve forces and list of reserve forces within this section, see Nov. 17, 1941, Op.Atty.Gen.

Return to civil employment.—Since this section makes no provision as to time within which to resume employment after termination, such as provision of section 246, subd. 2, an employee receiving compensation under this section will not be entitled to salary payments between the time of his release and his report back to work, allowing him, however, a reasonable time within which to return under the individual circumstances. Nov. 17, 1941, Op.Atty.Gen.

Civil salary or compensation.—Both the maintenance and cash salary which City of New York paid to medical superintendent of city hospital at time of superintendent's induction into ordered active military service constituted his "salary or compensation" as an officer or employee of city within subdivision 1. Kogel v. McGoldrick, 1942, 178 Misc. 105, 33 N.Y.S. 2d 122, modified, 1942, 264 App.Div. 898, 35 N.Y.S.2d 916, reversed, 1942, 289 N.Y. 318, 45 N.E.2d 817.

Construction of 1942 amendment.—The amendment to this section respecting compensation and privileges of state or municipal employees while absent on military duty which provides that this section shall not apply to employees inducted into military or naval service pursuant to the Federal Selective Service Act, 50 U.S.C.A.Appendix, § 301 et seq., made no substantive change in the law but was simply declaratory of legislative intent and administrative interpretation of this section. Application of Tighe, 1942, — Misc. —, 36 N.Y.S.2d 523.

Duty "under the provisions of this chapter."—Subdivision 1 of this section providing that during an absence arising under this section authorizing leaves of absence of municipal employees on ordered military duty, no employee should be prejudiced because of such absence with reference to continuance in, or reappointment to, employment involves no arbitrary discrimination and deprives no person of equal protection of the law notwithstanding that the legislature might grant the same privilege to other classes or deny it to all. Williams v. Walsh, 1942, 289 N.Y. 1, 43 N.E.2d 498, affirming 264 App.Div. 839, 35 N.Y.S.2d 557.

Family allowances as military compensation.—Federal military allowance to dependents is not civil compensation within this section and should therefore not be considered in computing differential salary. June 11, 1942, Op.Atty.Gen.; March 16, 1943, Op.Atty.Gen.

Purpose.—The 1936 amendment of this section entitling state or municipal employees absent on ordered military or naval duty to leaves of absence from their positions and to compensation and privileges was designed to protect New York State and Municipal Civil Service employees

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who should volunteer in the Naval and Marine Corps Reserves either in peace or war time. Roper v. Walsh, 1942, 264 App.Div. 325, 35 N.Y.S. 2d 553, affirmed, 1942, 43 N.E.2d 528, motion granted, 1942, 289 N.Y. 647, 44 N.E.2d 621.

Deduction for maintenance.—Maintenance, including family allowance, is part of State compensation under Mental Hygiene Law, § 36, and must be deducted in computing differential salary under this section. June 11, 1942, Op.Atty.Gen.

Foreign service pay.—Increase in base pay for foreign service should be added to compensation received for military duty in computing salary differential under this section. May 16, 1942, Op.Atty.Gen.

New York Guard.—Discharge of enlisted men in the New York Guard after April 1, 1942, to accept a commission is a method of promotion and does not make this section inapplicable because of amendment by L. 1942, c. 255, limiting its application to those having the requisite status prior to April 1, 1942. May 19, 1942, Op.Atty.Gen.

Only those public employees who became members of New York Guard on or before April 1, 1942, are entitled to differential pay under this section, as amended by L.1942, c. 255, when ordered to duty before or after April 1, 1942. May 5, 1942, Op.Atty.Gen.

Induction under Selective Service Act.—Where a member of the New York city fire department was drafted under Federal Selective Service Act, 50 U.S.C.A.Appendix, § 301 et seq., and, being over 28 years of age, was discharged from active training and transferred to the enlisted reserve corps and was then restored to his duties in the department, and member was subsequently recalled to active service in the army, the member, after being granted a leave of absence, was not entitled to further benefits under this section. Application of Tighe, 1942, — Misc. —, 36 N.Y.S.2d 523.

This section respecting compensation and privileges of state or municipal employees while absent on military duty was intended to encourage voluntary military training in the reserve forces concurrently with civilian employment, and this section does not cover the involuntary transfer of an inductee to reserve forces following involuntary induction under the Federal Selective Service Act, 50 U.S.C.A.Appendix, § 301 et seq. Application of Tighe, 1942, — Misc. —, 36 N.Y.S.2d 523.

Orders contravening section.—No order may be promulgated by which the benefits granted to municipal employees by this section relating to leaves of absence on ordered military duty may be denied or diminished. Williams v. Walsh, 1942, 289 N.Y. 1, 43 N.E.2d 498, affirming 264 App. Div. 839, 35 N.Y.S.2d 557.

Persons entitled to benefits.—The benefits accorded by this section providing that during an absence arising under this section authorizing leaves of absence of municipal employees on ordered military duty, no employee should be prejudiced because of such absence with reference to employment, constitute a term of employment of every municipal employee, and municipal employees who were members of the state or federal military service prior to the United States' declaration of war are entitled to the benefits granted to them under the law. Williams v. Walsh, 1942, 289 N.Y. 1, 43 N.E.2d 498, affirming 264 App.Div. 839, 35 N.Y.S.2d 557.

Firemen.—Under this section providing that during an absence arising under this section authorizing leaves of absence of municipal employees on ordered military duty, no employee should be prejudiced because of such absence with reference to employment, a fireman, first grade, of New York City, enlisting in the Marine Corps Reserve subsequent to the declaration of war, was entitled to have his official records show that he was absent with leave upon military duty and to be paid the compensation provided by this section for municipal employees on military duty. Williams v. Walsh, 1942, 289 N.Y. 1, 43 N.E.2d 498, affirming 264 App. Div. 839, 35 N.Y.S.2d 557.

Construction.—This section providing salary benefits to public officers and employees who are members of National Guard or Naval Militia or of the reserve corps or force in the federal military service during absence from employment while engaged in performance of ordered military duty was required to be construed in light of circumstances under which it was enacted and amended, so that reference to reserve corps which was added at time when enlisted reserve was composed entirely of voluntary members disclosed legislative purpose to protect public employees who volun-

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tarily entered reserve forces. Murphy v. Westchester County, 1942, 265 App.Div. 162, 38 N.Y.S.2d 184, reversing 36 N.Y.S.2d 71.

In determining right of deputy sheriff who had been inducted into the Army under the Federal Selective Training and Service Act of 1940, 50 U.S.C.A.Appendix, § 301, et seq., transferred to the Enlisted Reserve Corps, 10 U.S.C.A. § 421, and then ordered into active service, to salary benefits provided by this section for public officers and employees who were members of reserve corps or force in federal military service during absence from employment, the meaning of this section was not so apparent as to preclude construction. Murphy v. Westchester County, 1942, 265 App. Div. 162, 38 N.Y.S.2d 184, reversing 36 N.Y.S.2d 71.

Retroactive.—Where this section regarding payment of salaries to public officers and employees who were members of reserve forces was amended so as to limit its operation to officers and employees who were members of reserve forces on or before effective date of amendment by L. 1942, c. 255, amendment did not operate "retroactively" so as to defeat or diminish rights of persons theretofore entitled to salary benefits, but because of enlargement of meaning of "reserve corps or force" beyond meaning of that term as employed in this section, amendment was merely declaratory and definitive of existing law. Murphy v. Westchester County, 1942, 265 App.Div. 162, 38 N.Y.S.2d 184, reversing 36 N.Y.S.2d 71.

Abolition of positions.—If positions as airport inspectors at Floyd Bennett Field of two of petitioners who were in military service were not abolished upon Floyd Bennett Field being taken over by United States Navy, such petitioners would be entitled to difference between their civil and military pay under provision of this section granting salary differentials to state and municipal officers and employees absent on military or naval duty. Adams v. McKenzie, 1942, 265 App.Div. 170, 38 N.Y.S.2d 290, reversing 177 Misc. 486, 31 N.Y.S.2d 185.

Superintendent of schools.—A board of education is required to pay the Superintendent of Schools who has been called as a reserve officer for active duty in the Army of the United States the difference in salary between his school district and military base plus longevity pay. Op.Education Dept., 1942, 64 St.Dept. 212.

§ 246. Provisions applicable to public employees who are absent on military duty

1. Definitions. As used in this section:

(a) The term "public employee" shall mean an officer or employee holding a position by appointment or employment in the state of New York or in the cities, counties, towns, villages or school districts thereof, or in any other political or civil division of the state or of a municipality, or in any public or special district, or in the service of any public authority, public benefit corporation, commission or board, or in any other branch of the public service.

(b) [See also par. (b) below] The term "military duty" shall mean military service in the military, naval, aviation or marine service of the United States subsequent to July first, nineteen hundred forty, or service under the selective training and service act of nineteen hundred forty, or the national guard and reserve officers mobilization act of nineteen hundred forty, or any other act of congress supplementary or amendatory thereto, or any similar act of congress hereafter enacted and irrespective of the fact that such service was entered upon following a voluntary enlistment therefor or was required under one of the foregoing acts of congress; but shall not include temporary and intermittent gratuitous service in any reserve or auxiliary force. It shall include time spent in reporting for and returning from military duty and shall be deemed to commence when the public employee leaves his position and to end when he is reinstated to his position, provided such reinstatement is within sixty days after the termination of military duty, as hereinafter defined.

(b) [See also par. (b) above] The term "military duty" shall mean military service in the military, naval, aviation or marine service of the United States subsequent to July first, nineteen hundred forty, or service under the selective training and service act [1] of nineteen hundred

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forty, or the national guard and reserve officers mobilization act [2] of nineteen hundred forty, or any other act of congress supplementary or amendatory thereto, or any similar act of congress hereafter enacted and irrespective of the fact that such service was entered upon following a voluntary enlistment therefor or was required under one of the foregoing acts of congress, or service with the American Red Cross while with the armed forces of the United States on foreign service. It shall include time spent in reporting for and returning from military duty and shall be deemed to commence when the public employee leaves his position and to end when he is reinstated to his position, provided such reinstatement is within sixty days after the termination of military duty, as hereinafter defined.

(c) The term "termination of military duty" shall mean the date of a certificate of honorable discharge or a certificate of completion of training and service as set forth in the selective training and service act of nineteen hundred forty, and the national guard and reserve officers mobilization act of nineteen hundred forty or, in the event of the incurrence of a temporary disability arising out of and in the course of such military duty, the date of termination of such disability.

(d) The term "position" shall mean the office or position held by a public employee at the time of his entrance upon military duty.

2. Leave of absence and reemployment. Every public employee shall be entitled to absent himself from his position while engaged in the performance of military duty and shall be deemed to have a leave of absence for the duration of such military duty. Such public employee shall be reinstated to his position provided he makes application for such reinstatement within sixty days after the termination of his military duty. He may be so reinstated, at any time after such sixty-day period and within one year after the termination of his military duty, in the discretion of the appointing officer or body.

3. Substitutes. A position held by a public employee who is absent on military duty shall, so far as practicable, be continued in existence but shall be deemed temporarily vacant and shall be filled only when the public interest so requires. Any appointment to fill such vacancy shall be designated as a substitute appointment and the request for certification, the certification and the indicia of appointment shall show that the person is being appointed as a substitute. Any public employee, who accepts appointment as a substitute, shall be granted a leave of absence from his former position until the termination of such appointment and the temporary vacancy resulting from such leave of absence shall be filled in like manner only when the public interest so requires and any appointment to such position shall also be designated as a substitute appointment and the request for certification, the certification and the indicia of appointment shall show that the person is being appointed to such position as a substitute. Every such substitute appointment shall be for a period not exceeding the leave of absence of the former incumbent and shall be made in accordance with the provisions of law applicable to such position, provided, however, that such substitute appointment may be continued for a period in excess of one year, notwithstanding the provisions of section fifteen of the civil service law. Such substitute employee shall acquire no right to permanent appointment or tenure by virtue of his service as a substitute and such service may be terminated at any time in the discretion of the appointing officer or body. His rights, if any, with respect to appointment or tenure shall not, however, be impaired in any way by his acceptance of an appointment as a substitute and his name shall remain on any eligible or other list and he shall be certified as eligible for any other appointment authorized by law during the existence of such list.

The appointment of a substitute shall terminate (a) upon the return of the former incumbent to his position or (b) upon the death or permanent total disability of the former incumbent or (c) upon failure of the former incumbent to return to said position within sixty days after the

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termination of his military duty or (d) upon the appointment or promotion of the former incumbent to another position as authorized by subdivision six of this section, and, upon the happening of any of such events, said position may then be filled in the manner provided by law.

No substitute shall hereafter receive pay or differential pay pursuant to section two hundred forty-five of this chapter. No substitute who is now receiving pay or differential pay pursuant to such section shall be entitled to receive such pay or differential pay after the date this subdivision, as hereby amended, takes effect. But a substitute who held another position as a public employee immediately prior to accepting appointment as a substitute shall be entitled to receive pay or differential pay in the same amount and in the same manner as if he had been ordered on military duty from his former position.

4. Pensions. Any public employee who is a member of any pension or retirement system may elect, while on military duty, to contribute to such pension or retirement system the amount which he would have contributed had his employment been continuous and upon making such contribution he shall have the same rights in respect to membership in the retirement system as he would have had if he had been present and continuously engaged in the performance of the duties of his position.

Time during which a member is absent on military duty, shall not constitute an interruption of continuous employment, but such time shall not be counted or included in determining the length of total service unless such member contributes to the retirement system the amount he would have been required to contribute if he had been continuously employed during such period. Such contribution, or any part thereof, may be paid at any time and from time to time, while in military duty, or within five years after the date of his restoration to his position.

A member of the New York state teachers' retirement system, whose service terminates on the expiration of his contract, and for whom there is no employer to cover the cost of his accruing pension rights while in military service following the cessation of his contract, may pay in addition to his own contributions, an amount equal to the percentage of his salary which his employer would have paid had he remained under contract, which contributions shall be paid into the pension accumulation fund of the aforementioned retirement system and be treated as if they had been continued by his employer except that in the event of his death as a member prior to retirement or on his withdrawal of his accumulated contributions from the system, the amounts so paid by him shall be returnable, with regular interest, as if they were a part of his accumulated contributions. Such contributions or any parts thereof may be paid at any time and from time to time while in military duty or within five years after the member has returned to public school teaching in New York state.

A member of a pension or retirement system who receives civil compensation, pursuant to section two hundred forty-five of this chapter, in excess of the amount of his required contributions to such system shall, while on military duty, continue to contribute the amount which he would have contributed had his employment been continuous and such contributions shall be deducted from his civil compensation.

Any such member, while on military duty, or his beneficiary, as the case may be, shall be entitled to all benefits of the retirement system of which he is a member except accidental disability retirement and accidental death benefit.

5. Rights upon restoration to position. A public employee restored to his position after the termination of his military duty or after the termination of his substitute appointment shall thereafter be entitled to the rate of compensation he would have received had he remained in his position continuously during such period of military duty or during such period of service as a substitute and shall be deemed to have rendered

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satisfactory and efficient service in such position during the period of his leave of absence and shall not be subjected directly or indirectly to any loss of time service, increment, or any other right or privilege, or be prejudiced in any way with reference to promotion, transfer, reinstatement or continuance in office.

6. Appointment while on military duty. Any appointing officer or body may, in his or its discretion, fill a vacancy by the appointment or promotion of a public employee or any other person legally eligible for such appointment or promotion, notwithstanding the absence of such person or employee in military duty but such appointment or promotion shall not serve to increase in any degree any civil compensation which he may have been receiving pursuant to section two hundred forty-five of this chapter. Such employee, upon the termination of his military duty shall have the same rights, privileges and obligations as if he had served continuously in such position from the date of his appointment thereto.

7. Status of existing lists. Any person whose name is on any eligible list shall, while in military duty, retain his rights and status on such list. If the name of any such person is reached for certification during his military duty, it shall be placed on a special eligible list in the order of his original standing, provided he makes request therefor during the period of sixty days following termination of his military duty. Such list shall be certified before certification shall be made from a subsequent eligible list for the same position. Such names shall remain on such special eligible list for a period of two years after the termination of such military duty.

7-a. Status of persons eligible for military duty. Any appointing officer or body, in his or its discretion, may determine to appoint as members of the uniformed force of a police department, a fire department or a department of correction from any appropriate eligible list only persons who have not been placed in classification one-a under the federal selective service act [1] and who are not in any of the reserve military or naval forces of the United States. In the event such determination is made and written notification thereof is given to the appropriate civil service commission, such appointing officer or body may make appointments pursuant to such determination. Every person who has been certified from any such list and who has not received an appointment either because of such classification or membership in such reserve military or naval forces shall be deemed to be engaged in military duty at the time of certification and shall be entitled to and shall retain, for the period ending two years from the date of the termination of hostilities, all the rights and privileges provided in this section for persons certified while in military duty or, if such person has been ordered into active military duty prior to such termination, then for the period ending two years after the termination of such military duty. Any such person subsequently appointed from a special eligible list shall be entitled to credit for seniority, dating from the time when he would have been reached for appointment from the original eligible list.

8. Service and efficiency ratings. A public employee who is absent on military duty shall be credited with the average of the efficiency ratings which he received for the three periods immediately prior to his absence on military duty but such rating shall not be less than a passing grade for the period of such absence. In computing seniority and service requirements for promotion eligibility, such period of military duty shall be counted as service in the position held by such employee.

9. Probationary service. If a public employee or other person enters military duty before the expiration of the probationary period in any position to which he may have theretofore been appointed, or to which he may thereafter be appointed or promoted pursuant to subdivision six of this section, the time he is absent on military duty shall be credited as satisfactory service during such probationary period.

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10. Physical examination. If a physical examination is required for employment in or promotion to any position in the public service, the physical disability of a candidate incurred by reason of injury sustained or disease contracted while in military duty, as hereinbefore defined, or during the world war shall not be deemed to disqualify him for such position unless the disability is of such a nature as to prevent him from efficiently performing the duties of such position.

11. Preferred lists. If the position occupied by a public employee is abolished prior to the termination of his military duty his name shall be placed forthwith upon a preferred list, as herein provided. Public employees in the competitive class of the civil service shall have their names placed upon a preferred eligible list, pursuant to the provisions of section thirty-one of the civil service law and public employees subject to section eight hundred eighty-one of the education law shall have their names placed upon a preferred list as provided in such section.

[12] [3] Military reemployment lists. If the position occupied by a public employee, who is not included in the provisions of subdivision eleven of this section, has been abolished or is no longer in existence upon the termination of his military duty such employee, upon filing a written request within sixty days after the termination of his military duty, shall have his name placed, forthwith, upon a military reemployment list, as herein provided, for the position last held by him or any similar position. The military reemployment list for public employees in the classified civil service, other than in the competitive class, shall be established by the civil service commission having jurisdiction of such position and such list for public employees who are not in the classified civil service shall be established by the officer who makes payment of the wages or salary for such position. Separate lists shall be established for positions in the non-competitive and the labor class of the classified civil service. After the establishment of a military reemployment list, it shall be made available to appointing officers and bodies and no position shall be filled until the appointing officer or body certifies to the civil service commission or to the disbursing officer, as the case may be, that no person on such military reemployment list, who formerly held the same or a similar position, is qualified to fill and willing to accept appointment to such vacancy. The civil service commission or the disbursing officer, as the case may be, shall refuse to approve the payroll for such position until such certificate is filed. Appointments from a military reemployment list may be made without regard to the order of standing on said list. Refusal to accept an offer of appointment to a position similar to that last held by such public employee shall cause the removal of his name from such list. Upon a failure or refusal to comply with the provisions of subdivisions eleven and twelve of this section, the supreme court is empowered, upon the filing of a petition or other appropriate pleading, by the public employee entitled to the benefits of such provisions, to specifically require compliance therewith, and may, as an incident thereto, compensate such employee for any loss of wages suffered by reason of such unlawful action. The court shall order a speedy hearing in any such case and shall advance it on the calendar. Nothing in this subdivision shall be construed to apply to positions in the exempt class of the classified civil service.

13. Temporary and seasonal positions. The provisions of subdivisions three and five of this section shall not be applicable to a public employee holding a temporary or seasonal position, but such employee shall, nevertheless, be placed upon a military reemployment list, as provided in subdivision twelve of this section, and, so far as practicable, shall be restored to a position similar to that held at the time such employee entered military duty.

14. Public employees appointed for a definite term or to exempt positions. A public employee appointed for a definite term shall be deemed to have a leave of absence until the end of his term of office and until his successor has been appointed, but not thereafter, for the pur-

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pose of determining his rights under this section and a public employee holding a position in the exempt class of the civil service shall be deemed to have a leave of absence until his position has been filled by other than a substitute appointee, but not thereafter, for the purpose of determining his rights under this section.

15. Elective officers. The provisions of subdivision four of this section shall be applicable to an elective officer and he shall be deemed to continue in his office until his successor has been elected, but not thereafter, for the purpose of determining his rights under such subdivision. No other provisions of this section shall be applicable to elective officers.

16. Salaries. Nothing in this section shall be construed to give any public employee any claim for salary or compensation during his absence on military duty.

17. Certificates as to service. A certificate signed by the adjutant general of the army as to persons in the army or in any branch of the United States service while serving pursuant to law with the army of the United States, signed by the chief of the bureau of navigation of the navy department as to persons in the United States service while serving pursuant to law with the United States navy, and signed by the major general commandant, United States marine corps, as to persons in the marine corps, or in any other branch of the United States service while serving pursuant to law with the marine corps, or signed by an officer designated by any of them, respectively, for the purpose, shall when produced be prima facie evidence as to any of the following facts stated in such certificate: That a person named has not been, or is, or has been in military service; the time when and the place where such person entered military service, his residence at that time, and the rank, branch, and unit of such service that he entered, the dates within which he was in military service, the monthly pay received by such person at the date of issuing the certificate, the time when and the place where such person died in or was discharged from such service. It is the duty of the foregoing officers to furnish such certificate on application, and any such certificate when purporting to be signed by any one of such officers or by any person purporting upon the face of the certificates to have been so authorized shall be prima facie evidence of its contents and of the authority of the signer to issue the same.

18. Rights and privileges of public employees and other persons while engaged in essential war work. Every public employee, or other person to whom this section is applicable, who has been or may be discharged or relieved from military duty on condition that he engage in work essential to the prosecution of the war, shall be entitled, while engaged in such work, to all the rights and privileges to which he would have been entitled, under the provisions of this section, had he continued to perform military duty. A certificate of the war manpower commission, or of the United States employment service, or of the proper authorities in the armed forces of the United States, or of any other authorized federal agency, that any such public employee, or other person to whom this section is applicable, is or has been, for the period stated in such certificate, engaged in such work, shall be required in order to confer upon such employee or person the rights and privileges accorded by this subdivision, and such certificate shall be presumptive evidence of such facts. Added L.1941, c. 843, § 1; amended L.1942, c. 255, § 2; L.1942, cc. 724, 725, 726; L.1942, c. 795, §§ 1, 2; L.1943, c. 133, eff. March 18, 1943; L.1943, cc. 320, 326, 395, 396, eff. April 6, 1943; L.1943, cc. 342, 351, 367, eff. April 7, 1943.

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[1] See 50 U.S.C.A.App. § 301 et seq.

[2] See 50 U.S.C.A.App. §§ 401–405.

[3] Subdivision enacted without a number, which has been supplied by the editor.

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Subd. 1, set out first, amended by L.1942, c. 726, eff. May 8, 1942, retroactive to April 28, 1941; L.1943, c. 133, eff. March 18, 1943. L.1942 inserted "and irrespective * * * acts of congress", in par. (b). L.1943, c. 133, inserted "but shall not include temporary and intermittent gratuitous service in any reserve or auxiliary force."

Subd. 1, set out second, amended by L.1942, c. 726, eff. May 8, 1942, retroactive to April 1, 1941; L.1943, c. 367, § 1, eff. April 7, 1943, in force until July 1, 1944. L.1942 inserted "and irrespective * * * acts of congress" in par. b. L.1943, c. 367, without reference to amendment by L.1943, c. 133, added "or service with * * * on foreign service" to first sentence in par. b.

Subd. 3 amended by L.1942, c. 255, eff. April 1, 1942; L.1942, c. 725, eff. May 8, 1942; L.1942, c. 727, § 2, eff. May 8, 1942. L.1942, c. 255, added third paragraph. L.1942, c. 725, inserted third sentence, also "substitute" preceding appointment in both instances in fourth sentence and "and such service * * * officer or body" in fifth sentence. L.1942, c. 727, § 2, amended third paragraph by inserting first sentence and making other changes.

Subd. 4 amended by L.1943, c. 351, eff. April 7, 1943. L.1943 inserted third paragraph.

Subd. 5 amended by L.1943, c. 326, eff. April 6, 1943. L.1943 inserted "or after the termination of his substitute appointment", and "or during such period of service as a substitute".

Subd. 7 added by L.1943, c. 395, eff. April 6, 1943. Former subd. 7 as amended by L.1942, cc. 724 and 795, was repealed by L.1943, c. 395, eff. April 6, 1943.

Subd. 7-a as added by L.1942, c. 795, § 2, was amended by L.1943, c. 396. eff. April 6, 1943. L.1943 substituted "two years" for "one year" in both instances in third sentence.

Subd. 8 amended by L.1942, c. 724, eff. May 8, 1942. L.1942 substituted "average of the" for "same service or", and "three periods" for "period".

Subd. 14 amended by L.1943, c. 342, eff. April 7, 1943. L.1943 inserted "or to exempt positions", in catchline, "the end of his term of office and until" and "and a public employee * * * under this section."

Subd. 18 added by L.1943, c. 320, eff. April 6, 1943.

Retroactive effect. L.1942, c. 726, § 2, referring to amendment of subd. 1 by said act, provides that such amendment shall be retroactive from and after April 28, 1941.

Former section 246 was renumbered 248 by L.1941, c. 843, § 1, eff. April 28, 1941.

Partial invalidity; inconsistent laws. L.1941, c. 843, § 7, provided as follows: "§ 7. If any section or other part of this act or the application thereof to any person or circumstances, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remainder of this act or the application thereof to other persons and circumstances, but shall be confined in its operation to the section or part of the act and the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been adopted had such invalid provision or application not been included. In so far as the provisions of this act are inconsistent with the provisions of any other act, general or special, or of any local law, the provisions of this act shall be controlling."

Construction with section 245.—This section grants no greater general right to continuance in office or employment or re-employment than section 245. March 16, 1943, Op.Atty.Gen.

This section deals only with protecting the employment status, rights and benefits of all public employees in military service. It does not affect salary payments to reservists under section 245 except as provided in subd. 6 of this section. Nov. 17, 1941, Op.Atty.Gen.

Pension or retirement systems.—Member of Retirement System while on military duty may not effect a loan under Civil Service Law, § 61, subd. 6, unless he elects to and does make contributions as provided in subdivision 4 of this section. June 27, 1941, Op.Atty.Gen.

Member of Retirement System on leave of absence on account of military service under subdivision 2 is not entitled to withdraw accumulated contributions as provided in Civil Service Law, § 61, subd. 1, except on resignation from the service. June 27, 1941, Op.Atty.Gen.

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Resignation and withdrawal of contributions severs employment and deprives a former member of the protection of Article 4 of the Civil Service Law on such severance of service. The protection of "continued service" in subdivision 4 of this section is not applicable to those who have "resigned." July 23, 1941, Op.Atty.Gen.

Under last paragraph of subdivision 4, ordinary death benefits may be paid to beneficiary under Civil Service Law, § 65-b if member dies while on military duty, although member may not have made contributions while in military service. June 27, 1941, Op.Atty.Gen.

Public health officer.—Where a local health officer is called to military service, his office should be filled by a "substitute" appointed under this section rather than by an "acting" officer appointed under provisions of Public Health Law § 21. The substitute is appointed in the same manner as any other vacancy in the office would be filled. Sept. 17, 1941, Op.Atty.Gen.

Public employee.—A local health officer is a public employee within meaning of this section. Sept. 17, 1941, Op.Atty.Gen.

Term of office.—Under subdivision 14, where a public health officer is called into military service during his term of office, the local board of health can appoint his successor at the expiration of four years from the time of appointment. Sept. 17, 1941, Op.Atty.Gen.

Abolition of civil positions.—This section does not confer a right to difference between civil and military pay after civil positions have been abolished in good faith because there is no further need for such positions, since it was designed to protect from impairment the standing of civil service employees because of military service and was not intended to improve their rights over what those would have been had they performed no military service. Adams v. McKenzie, 1941, 177 Misc. 486, 31 N.Y.S.2d 185, reversed on other grounds, 1942, 265 App.Div. 170, 38 N.Y.S.2d 290.

Retroactive effect.—Where this section was amended so as to limit its operation to cases of officers and employees who were members of reserve forces on or before effective date of the amendment, the amendment does not operate retroactively. Murphy v. Westchester County, 1942, — Misc. —, 36 N.Y.S.2d 71, reversed on other grounds, 1942, 265 App.Div. 162, 38 N.Y.S.2d 184.

Reinstatement.—The right of reinstatement under subdivision 2 of this section applies only to cases where the employment would not have been terminated by any intervening cause apart from absence on military duty. March 16, 1943, Op.Atty.Gen.

Furlough prior to entering service.—Vacation with pay may be granted to those on furlough under policy of Selective Service System of granting furlough of 14 days prior to such entry, vacation allowance may be granted during such period. July 1, 1942, Op.Atty.Gen.

Vacations.—Members of the Retirement System joining Army Specialist Corps, are not engaged in performance of military duty within purview of this section. July 14, 1942, Op.Atty.Gen.

This section excludes any authority to grant vacations with pay to employees absent in military service, but does not prevent allowance of vacation prior to the time of such service and protects vacation rights after the termination thereof. May 19, 1942, Op.Atty.Gen.

Army Specialist Corps.—Public employees joining the Army Specialist Corps become civilian employees of the United States Government and are not protected in their civil service status and rights by this section, although eligible for the leave of absence provided for in Rule XVI of appendix to Civil Service Law. July 3, 1942, Op.Atty.Gen.

Coast Guard Auxiliary.—The Coast Guard Auxiliary is not a military service and public employees serving therein are entitled only to such leave as is provided under rule 14 for the classified civil service. August 24, 1942, Op.Atty.Gen.

Coast Guard Reserve.—The amendment, 14 U.S.C.A. §§ 381–388, providing for a Women's Reserve in the United States Coast Guard Reserve, establishes such Reserve as a military organization and its members, known as Spars, are entitled to the protection of this section. Dec. 29, 1943, Op.Atty.Gen.

The Coast Guard Reserve is in the military service of the United States and this section is applicable to public employees who are members of it. August 24, 1942, Op.Atty.Gen.

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Maritime service.—The U. S. Maritime Service is a non-military organization for training of merchant seamen and public employees therein are not entitled to military leave of absence under this section but may be granted leave under Rule 16 of the Rules for the Classified Civil Service, Civil Service Law Appendix. September 21, 1942, Op.Atty.Gen.

War industries and Federal services.—There is no automatic leave of absence granted by this section to persons in public employment who desire to enter the war industries or Federal service but such absence is entirely within the discretion of the appointing officer or body and must have the approval of the Budget Director. August 19, 1942, Op.Atty.Gen.

Women's Army Auxiliary Corps.—Members of the Retirement System entering Women's Army Auxiliary Corps are on military duty and eligible to continue membership in Retirement System pursuant to subdivision 4 of this section. July 14, 1942, Op.Atty.Gen.

Appointive public officers and employees in this State, who are members of the Women's Army Auxiliary Corps, are in military service so as to be entitled to civil service protection of this section. July 7, 1942, Op.Atty.Gen.

Women's Naval Reserve.—The Women's Naval Reserve, as created by 34 U.S.C.A. § 857 et seq., is a military organization and its members, known as WAVES (women appointed for volunteer emergency service), are entitled to the protection of this section. September 21, 1942, Op. Atty.Gen.

§ 246-a. Members of pension system absent on military duty

Where any duly elected office holder, or any officer or employee of the state or any municipality or political subdivision thereof, who is a member of any pension or retirement system, entered or enters the armed forces of the United States before his term of office expired or expires, and prior to the date when he first would be eligible for pension benefits or payments provided for under such pension or retirement system of which he is a member had he continued in the office or employment of the state or such municipality or political subdivision, he may, during the period he is in the armed forces of the United States, remain a member of such pension or retirement system provided he paid or pays into such system monthly, until the date his term of office expired or expires, such amount as he would have paid if he had been present and continuously engaged in the performance of his regular duties as such office holder, officer or employee and provided that after his term of office expired or expires he paid or pays into such pension or retirement system monthly, such full and entire amount as he individually would have paid, together with such amount as would have been paid on his behalf by the state or such municipality or political subdivision of which he was an office holder, officer or employee, had he continued as such office holder, officer, or employee and had been present and continuously engaged in the regular performance of his duties, and he shall have and be entitled to the same rights in respect to membership in such pension or retirement system and the rights and obligations provided thereunder, as he would have had if he had continued as such office holder, officer or employee and had been present and continuously engaged in the regular performance of his duties except that a disability or injury incurred or an accidental death occurring while a member of the armed forces of the United States shall not entitle such office holder, officer or employee, his beneficiaries or representatives to any disability or accidental death benefits.

The provisions of this section shall be construed to include all elected office holders, officers or employees of the state or of a municipality or political subdivision thereof, whose term of office expired since January first, nineteen hundred forty-one, and who since January first, nineteen hundred forty-one, entered the armed forces of the United States, provided such office holder, officer or employee shall within sixty days from the date this section takes effect, notify the fiscal officer of such pension or retirement system in writing that he has determined to take advantage of the rights and privileges afforded him hereunder

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and provided further that he pays within such sixty days the full amount required to be paid into such system by him as provided for under this section and not already paid by him.

No person entering the armed forces of the United States after the effective date of this section shall be entitled to the benefits provided for hereunder unless he shall give written notice to the chief fiscal officer of such pension or retirement system of which he is a member within thirty days after he enters the armed forces of the United States that he elects to take advantage of the rights and privileges afforded him under the provisions of this section and will promptly make all payments as are required hereunder. Added L.1942, c. 505, eff. April 20, 1942.

§ 247. Conspicuous service cross. The governor is hereby authorized to present in the name of the legislature of the state of New York, a military cross, to be known as the conspicuous service cross, bearing a suitable inscription and ribbon, all of which shall be of suitable design, to any citizen of the state of New York who, while serving in the United States army, navy, marine corps, or in the army female nurse corps, since the sixth day of April, nineteen hundred and seventeen, has, or shall have received a citation published in order issued from a headquarters of a brigade or higher military unit, or equivalent naval unit. The governor is further authorized to present the conspicuous service cross to New York troops, or to citizens of this state who while serving with the allied armies received citations as provided in this section. Not more than one military cross shall be issued to any one person; nor shall any medal be awarded or presented, under the provisions of this section, to any person whose entire service subsequent to the time of the receipt of such citation shall not have been honorable. For each succeeding citation as provided herein, such person shall be entitled to wear, as the adjutant general of the state may direct, a metal device not more than three-sixteenths of an inch in diameter, attached to the ribbon of such military cross. In the event of the death of any person during or subsequent to the receipt of such citation the military cross shall be presented to such representative of the deceased as may be designated. The adjutant general of the state shall make such rules and regulations as may be deemed necessary for the proper presentation and distribution of such decorations.

New. Added by L. 1925, ch. 136, in effect March 16, 1925.

Another § 247, with same catchline, added by L. 1920, ch. 627, § 1, and amended by L. 1921, ch. 588, § 50, was repealed by L. 1924, ch. 114, § 36.

§ 248. Oaths

Formerly 246, renumbered 248 by L.1941, c. 843, § 1, eff. April 28, 1941.

§ 249. State and municipal officers and employees granted leaves of absence on July fourth in certain cases

Each officer and employee of the state or of a municipal corporation or of any other political subdivision thereof who was a member of the national guard or naval militia or a member of the reserve corps at a time when the United States was not at war and who has been honorably discharged therefrom, shall, in so far as practicable, be entitled to absent himself from his duties or service, with pay, on July fourth of each year. Notwithstanding the provisions of any general, special or local law or the provisions of any city charter, no such officer or employee shall be subjected by any person whatever directly or indirectly by reason of such absence to any loss or diminution of vacation or holiday privilege or be prejudiced by reason of such absence with reference to promotion or continuance in office or employment or to reappointment to office or to reemployment. Formerly subd. 1-a of § 245, renumbered § 149 by L.1941, c. 843, § 2, eff. April 28, 1941.

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ARTICLE 12

MISCELLANEOUS PROVISIONS

Section 256-a. Duplicate service medals [New].
256-b. Record of burial place of persons who served in the military or naval service of the United States [New].

§ 251. Duties by title of office.

The duties assigned to an officer by title in this chapter shall devolve, in case of absence or disability to command of the officer named, upon the line officer next in rank, except as otherwise provided in this chapter.

§ 252. Formation of association; by-laws. The officers of any regiment or battalion or squadron *or detachment* not a part of a regiment, *or similar organization,*[1] *or the officers thereof having their home station at the headquarters of such regiment, battalion or squadron or similar organization,* and the members of any squadron, troop, battery, company, division, company of signal corps,[2] hospital *company,* ambulance company *or similar organization,* or *of a* detachment of[3] *the medical department,* may organize themselves into an association of which the commanding officer shall be president; provided, however, that such association shall by an affirmative vote of two-thirds of all their members adopt by-laws, rules and regulations not inconsistent with this chapter, and which shall conform to the system prescribed in general regulations, and be submitted to the[4] *commanding general of the national guard* or the commanding officer of the naval militia, as the case may be, for his approval; and which by-laws shall provide that the treasurer of such association shall furnish proper security for the faithful performance of his duties; that all funds of the association shall be kept in a bank of deposit in a separate account in the name of the association; that checks upon such funds shall be signed both by the treasurer and the commanding officer *as president* of such association; and that the books and accounts of such association shall at all times be open to the inspection of any official whose duty it is to inspect the organized militia of the state or of any member of the association. Such by-laws may contain such other provisions as are not inconsistent with the limitations herein set forth, and when approved by the[4] *commanding general of the national guard* or the commanding officer of the naval militia, as the case may be, such by-laws, rules and regulations shall be binding upon all commissioned officers and enlisted men therein; but they may be altered in the manner provided for their adoption from time to time as may be found necessary, provided, however, that the essential provisions hereinabove set forth shall in no case be omitted or qualified. Every association already formed which has not adopted by-laws under the regulations and limitations hereinabove set forth; and every association heretofore formed which has adopted by-laws that do not contain the essential requirements hereinabove set forth, shall adopt revised by-laws containing such requirements and submit the same for approval to their respective commanding officers as above set forth.[5]

Amended by L. 1921, ch. 588, § 51; L. 1924, ch. 114, § 37, in effect April 12, 1924. Matter in italics new. Omissions: [1] "the officers . . . artillery district." [2] "field." [3] "hospital corps." [4] "major-general." [5] "A troop . . . for all purposes."

Membership.—This section does not authorize adoption of by-laws by a military association formed thereunder, permitting membership by persons not enlisted or commissioned in the military forces. August 8, 1942, Op.Atty.Gen.

§ 254. Rules and regulations. The governor is hereby authorized to make such rules and regulations as he may deem expedient, but such

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rules and regulations shall conform to this chapter, and, as nearly as practicable, to those governing the United States army and navy and when promulgated, shall have the same force and effect as the provisions of this chapter. Such rules and regulations shall not be repealed, altered, amended or added to, except by the commanding general of the national guard or the commanding officer of the naval militia, with the approval of the governor. The rules and regulations in force at the time of the passage of this chapter, shall remain in force until the new rules and regulations are approved and promulgated.

Formerly § 255. Renumbered § 254 by L.1917, ch. 644, § 42. Former § 254 repealed by § 43 of same act.

Amended by L. 1921, ch. 588, § 52, in effect May 5, 1921. Amendment changed the words "major-general" to read "commanding general of the national guard".

Amendment of regulation prescribing minimum age.—The present regulations prescribing the minimum age of eighteen years for enlistment in the Naval Militia may be amended by reducing the minimum age to seventeen years to conform with the present regulations governing enlistment in the naval and marine service of the United States. (1934) Op. Atty. Gen. 84.

§ 255. Custom and usage of the United States army and navy.

Formerly § 256. Renumbered § 255 by L.1917, ch. 644, § 42. Former § 255 renumbered § 254 by same act.

§ 256. Organizations not attached to brigade. [Repealed.]

Formerly § 257. Renumbered 256 by L. 1917, ch. 644, § 42. Repealed by L. 1921, ch. 588, § 55, in effect May 5, 1921.

§ 256-a. Duplicate service medals. Whenever it shall appear to the satisfaction of the adjutant-general that any service medal duly issued by the state of New York, in accordance with the military or naval rules and regulations, to a member of the national guard or naval militia of the State of New York, has been lost or stolen, he may, in his discretion, *and upon such terms as he may impose,* upon written application of the person originally entitled to such medal, issue a duplicate thereof.

New. Added by L. 1920, ch. 219. Amended by L. 1921, ch. 588, § 53, in effect May 5, 1921. Amendment inserted matter in italics.

§ 256-b. Record of burial place of persons who served in the military or naval service of the United States. The adjutant-general shall compile a record of the burial place within the state of soldiers, sailors or marines who served in the military or naval forces of the United States. Such record, so far as practicable, shall indicate the name of each such person; the service in which he was engaged; the number of the regiment or company, if a soldier, and of the command, if a sailor or marine; the rank and period of service; the name and location of the cemetery or other place in which his body is interred; the location of the grave in such cemetery or other place; and the character of headstone or other marker, if any, at such grave. The adjutant-general shall cause blank forms to be prepared whereby the information required for such record may be transmitted to him. Every person or corporation, including a municipal corporation, owning or controlling any cemetery or burial place within the state in which are interred the bodies of persons who served in the military or naval forces of the United States, shall file with the adjutant-general a certificate on the forms provided by him, of the facts required for such record, so far as the same are within the knowledge of such person, corporation or its agents. The adjutant-general shall cause blank certificates to be distributed to such persons and corporations as he deems advisable, with a request that such information be transmitted to him, but the failure to receive such blank and request shall not relieve any person or corporation from the obligation of complying with this section, within ninety days after it takes effect. The record

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compiled pursuant to this section shall be properly indexed and conveniently arranged for ready reference.

New. Added by L. 1924, ch. 290, in effect April 23, 1924.

§ 257. [See § 256.]

§§ 258–260. [Renumbered.]

Sections 258, 259, 260, renumbered 257, 258, 259, by L. 1917, ch. 644, § 42.

ARTICLE XIII

New York State Soldiers' and Sailors' Civil Relief Act

Sec.
300. Findings and declaration of emergency.
301. Definitions.
302. Stay, etc., to persons secondarily liable.
303. Protection against judgment in default, etc.
304. Proceedings to be stayed unless interest unaffected by military service.
305. Relief against fines and penalties, etc.
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309. Evictions; restraint.
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316. Reemployment in private industry.
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317-a. Effect of death of donor of power of attorney [New].
318. Certificates as to service.
319. Interlocutory orders.
320. Separability.
321. Inconsistent provisions in other acts.
322. Duration of the emergency.
323. Short title.

Article was added by L.1941, c. 686; amended by L.1942, c. 216, § 15, eff. March 29, 1942. L.1942, amended catchline of section 304.

Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S.C.A.App. § 501 et seq.

§ 300. Findings and declaration of emergency

It has been nationally recognized that because of the emergent conditions which are threatening the peace and imperilling the security of the nation, there is imperative need to augment and strengthen the national defense. It is further recognized that the emergent conditions which endanger the national well-being likewise constitute an imminent threat and hazard to the peace and security of the people of the state. Moreover, it is acknowledged that the exigencies of national defense requires that the people of the state, in large numbers, be called into military service, and as a consequence, the health, prosperity and welfare of all of the people of the state is inevitably affected.

In these circumstances, and in order to promote and to assist the national defense, and thereby to protect the peace, prosperity and health of the people of the state, it is necessary that citizens and residents of the state in the military service of the United States should be free to devote their entire energy and effort to the defense needs of the nation. To assist in this end, it is essential to provide in certain cases for the

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temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service. It is further essential in the interests of the prosperity and well-being of the people of the state, that such persons, upon completion of military service, be restored to their former employment.

In the interpretation and application of this article, it is hereby declared to be the public policy of the state to maintain, secure and protect the civil and property rights of persons in the military service, as hereinafter defined.

The legislature hereby declares the existence of a public emergency affecting the health, safety and comfort of the people, requiring the enactment of the provisions of this act to protect the vital interests of the state.

All the provisions of this article shall be liberally construed for the accomplishment of this purpose.

This article shall be deemed an exercise of the police power of the state, for the protection of the public welfare, prosperity, health, and peace of the people of the state. Added L.1941, c. 686, eff. April 23, 1941.

Construction.—Statutes enacted for the benefit of persons engaged in military service are a recognized institution in the United States, and being remedial are to be construed liberally. Hunt v. Jacobson, 1942, 178 Misc. 201, 33 N.Y.S.2d 661.

Law governing.—In case of conflict between this article and the federal act, 50 U.S.C.A.App. § 501 et seq., passed for relief of soldiers and sailors, the latter act controls. Kelley v. Kelley, 1942, — Misc. —, 38 N.Y.S.2d 344.

Purpose.—The federal Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C.A.App. § 510 et seq., and similar provisions of this article, were enacted to give members of the armed forces a degree of mental repose through intervention of the courts to the end that their rights and remedies shall not be imperiled in consequence of military service and the act does not apply merely because such person is in the military service and is not to be employed as a vehicle of oppression or invoked for a needless purpose, but is to be administered as an instrument to accomplish substantial justice. Hunt v. Jacobson, 1942, 178 Misc. 201, 33 N.Y.S.2d 661.

The purpose of soldiers' and sailors' civil relief enactments is to relieve persons in military service from mental distress occasioned by handicap of being in service resulting in inability to function with freedom of action possessed prior to induction, causing inability to meet financial and other obligations and commitments, mental distress resulting from inability to protect legal rights adequately or to defend suits. Hunt v. Jacobson, 1942, 178 Misc. 201, 33 N.Y.S.2d 661.

Application.—The Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C.A.App. § 501 et seq., has application only when the military service in fact has prevented or is preventing a member of the military forces from meeting the obligations imposed on him by the instrument sued on. Brooklyn Trust Co. v. Papa, 1941, — Misc. —, 33 N.Y.S.2d 57.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S.C.A.Appendix, § 510.

§ 301. Definitions

When used in this article: 1. The term "persons in military service" and the term "persons in the military service of the United States", shall include all citizens and residents of the state in the active military service of the United States.

2. The term "military service" means federal service on active duty with any branch of military service of the United States, including training or education under the supervision of the United States, after induction into the military service.

3. The term "active service" or "active duty" shall include the period during which a person in the military service of the United States is absent from duty on account of sickness, wounds, leave or other lawful cause.

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4. The term "period of military service" shall include the time between the following dates: For persons in active service on October seventeen, nineteen hundred forty, it shall begin with said date; for persons entering active service after October seventeen, nineteen hundred forty, it shall begin with the date of entering active service. It shall terminate with the date of discharge from active service or death while in active service, but in no case later than the date when this act ceases to be in force.

5. The term "person" when used herein with reference to the holder of any right alleged to exist against a person in military service, or against a person secondarily liable under such right, shall include individuals, partnerships, corporations, and any other forms of business association.

6. The term "court" as used herein, shall include any state court of competent jurisdiction, whether or not a court of record. Added L. 1941, c. 686, eff. April 23, 1941.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S. C.A.Appendix, § 511.

§ 302. Stay, etc., to persons secondarily liable

1. Whenever, pursuant to any of the provisions of this article, the enforcement of any obligation or liability, the prosecution of any suit or proceeding, the entry or enforcement of any order, writ, judgment or decree, or the performance of any act, may be stayed, postponed or suspended, such stay, postponement or suspension may, in the discretion of the court, likewise be granted to sureties, guarantors, endorsers and others subject to the obligation or liability, the performance or enforcement of which is stayed, postponed or suspended.

2. When a judgment or decree is vacated or set aside, in whole or in part, as provided in this article, the same may, in the discretion of the court, likewise be set aside and vacated as to any surety, guarantor, endorsers or other persons liable upon the contract or liability for the enforcement of which the judgment or decree was entered. Added L. 1941, c. 686, eff. April 23, 1941.

Leases.—Where tenant was obliged to abandon his business conducted in leased premises by reason of his being drafted into military service, tenant would be relieved of his obligation under lease, even though Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.A.Appendix, § 501 et seq., did not provide for any abrogation of an obligation of such character, and, hence, one who guaranteed tenants' performance under lease could not be held liable on his guaranty. Jefferson Estates v. Wilson, 1942, — Misc. —, 35 N.Y.S.2d 582, affirmed, 1943, 39 N.Y.S.2d 502.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S. C.A.Appendix, § 513.

§ 303. Protection against judgment in default, etc.

1. In any action or proceeding commenced in any court, if there shall be a default of an appearance by the defendant, the plaintiff, within twenty days before the entry of judgment, shall file in the court an affidavit setting forth facts showing that the defendant is not in military service. If unable to file such affidavit, plaintiff shall in lieu thereof file an affidavit setting forth either that the defendant is in the military service or that plaintiff is not able to determine whether or not defendant is in such service. If an affidavit is not filed showing that the defendant is not in the military service, no judgment shall be entered without first securing an order of court directing such entry, and no such order shall be made if the defendant is in such service until after the court shall have appointed an attorney to represent defendant and protect his interest, and the court shall on application make such appointment. Unless it appears that the defendant is not in such service the court may require, as a condition before judgment is entered, that the

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plaintiff file a bond, approved by the court, conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any judgment should the judgment be thereafter set aside in whole or in part. And the court may make such other and further order or enter such judgment as in its opinion may be necessary to protect the rights of the defendant under this act.

2. Any person who shall make or use an affidavit required under this section, knowing it to be false, shall be guilty of a misdemeanor, and shall be punishable by imprisonment not to exceed one year or by fine not to exceed one thousand dollars, or both.

3. In any action or proceeding in which a person in military service is a party, if such party does not personally appear therein or is not represented by an authorized attorney, the court may appoint an attorney to represent him; and in such case a like bond may be required and an order made to protect the rights of such person. But no attorney appointed under this act to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts.

4. If any judgment shall be rendered in any action or proceeding governed by this section against any person in military service during the period of such service, or within thirty days thereafter, and it appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application, made by such person or his legal representative, not later than ninety days after the termination of such service, be opened by the court rendering the same and such defendant or his legal representative let in to defend; provided it is made to appear that the defendant has a meritorious or legal defense to the action or some part thereof. Vacating, setting aside, or reversing any judgment because of any of the provisions of this act shall not impair any right or title acquired by any bona fide purchaser for value under such judgment. Added L.1941, c. 686; amended L.1943, c. 533, eff. April 16, 1943.

Subd. 1 amended by L.1943, c. 533, eff. April 16, 1943. L.1943 substituted "within twenty days before the entry" for "before entering".

Unemployment contributions, collection of.—Provisions of subd. 1 of this section and similar provisions of the federal Soldiers' and Sailors' Civil Relief Act of 1940, § 200(1), 50 U.S.C.A.App. § 520(1), do not apply to a warrant to collect contributions from employers filed by the Industrial Commissioner under Labor Law, § 523, subd. 2, since such filing is not an "action or proceeding commenced in any court." May 6, 1941, Op.Atty.Gen.

This chapter and similar provisions of the federal Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C.A.App. § 501 et seq., would apply to any suit for collection of unemployment contributions instituted by the Industrial Commissioner under Labor Law, § 522. May 6, 1941, Op.Atty. Gen.

Affidavit.—Affidavit to the effect that defendant was not in the military service of the United States in any capacity at the time of service of process did not comply with provisions of either 50 U.S.C.A.Appendix, § 520 or this section requiring as a prerequisite to entry of judgment upon default by defendant the filing of an affidavit setting forth facts showing that defendant is not in military service. National Bank of Far Rockaway v. Van Tassell, 1942, 178 Misc. 776, 36 N.Y.S.2d 478.

Under 50 U.S.C.A.Appendix, § 520 and this section requiring as a prerequisite to entry of judgment in case of default by defendant the filing of an affidavit setting forth facts showing that the defendant is not in military service, any affidavit made prior to expiration of the time after service of process in which defendant must appear or answer fails to meet requirements of said sections. National Bank of Far Rockaway v. Van Tassell, 1942, 178 Misc. 776, 36 N.Y.S.2d 478.

In affidavit intended to show that defendant was not in military service in compliance with requirements of 50 U.S.C.A.Appendix, § 520 and this section for entry of default judgment, reference to defendant's civilian clothes was of no import. National Bank of Far Rockaway v. Van Tassell, 1942, 178 Misc. 776, 36 N.Y.S.2d 478.

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Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S.C.A.Appendix, § 520.

§ 304. Proceedings to be stayed unless interest unaffected by military service

At any stage thereof, any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this act, unless, in the opinion of the court, the ability of plaintiff to prosecute the action, or the defendant to conduct his defense, is not materially affected by reason of his military service. Added L.1941, c. 686, eff. April 23, 1941.

Purpose.—This section was intended to protect a soldier or sailor in military service during pendency of an action before judgment and pending determination of an appeal from such judgment. Shisler v. Becker, 1942, — Misc. —, 38 N.Y.S.2d 60.

Provision of this section for protection of men in the military service was not intended to give complete immunity from claims arising as the result of civilian life and activities, and the provision should not be used as a sword to the detriment of the rights of others rather than as a shield. Isaacs v. Isaacs, 1942, — Misc. —, 37 N.Y.S.2d 527.

Denial of stay.—Where attorney for defendant in the military service had made no attempt to communicate with client since previous stay, and it appeared that defendant was located within convenient distance from New York City, that his whereabouts was not a military secret, and that he was or could be available to his attorney upon frequent visits to New York City, defendant's motion for a stay would be denied and plaintiff would be granted leave to amend complaint. Isaacs v. Isaacs, 1942. — Misc. —, 37 N.Y.S.2d 527.

Interest as affected by service.—Where after judgment was rendered against defendant in City Court, defendant was inducted into the army and remained in military service, and cost of a transcript of trial minutes upon which appeal from judgment would be heard would approximately be $54, a motion to dismiss defendant's appeal would be denied, since defendant's ability to prosecute appeal would be materially affected by reason of his military service. Shisler v. Becker, 1942, — Misc. —, 38 N.Y.S.2d 60.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S. C.A.Appendix, § 521.

§ 305. Relief against fines and penalties, etc.

When an action for compliance with the terms of any contract is stayed pursuant to this act no fine or penalty shall accrue by reason of failure to comply with the terms of such contract during the period of such stay, and in any case where a person fails to perform any obligation and a fine or penalty for such non-performance is incurred a court may, on such terms as may be just, relieve against the enforcement of such fine or penalty if it shall appear that the person who would suffer by such fine or penalty was in the military service when the penalty was incurred, and that by reason of such service the ability of such person to pay or perform was thereby materially impaired. Added L. 1941, c. 686, eff. April 23, 1941.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S. C.A.Appendix, § 522.

§ 306. Actions against persons in service

In any action or proceeding commenced in any court against a person in military service, before or during the period of such service, or within sixty days thereafter, the court may, in its discretion, on its own motion, or on application to it by such person or some person on

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his behalf shall, unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of his military service:

1. Stay the execution of any judgment or order entered against such person, as provided in this act; and

2. Vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this act. Added L.1941, c. 686, eff. April 23, 1941.

Policy of state.—State has no policy of invoking discretion of court under this section to stay executions against salaries of State employees in military service. Oct. 15, 1941, Op.Atty.Gen.

Unemployment contributions, collection of.—Where employer has confessed judgment pursuant to an arrangement permitting deferred payment of unemployment contributions and the employer is in military service, proceedings to enforce such judgment may be stayed as provided in this section and similar provisions of the federal Soldiers' and Sailors' Civil Relief Act of 1940, § 203, 50 U.S.C.A.App. § 523. May 6, 1941, Op.Atty.Gen.

Order of court, necessity for.—Until and unless employer is served with an order of court made under this section, he should comply with the requirements of any execution against salaries and earnings of employees in military service. Oct. 15, 1941, Op.Atty.Gen.

Accrual of action.—Where petitioner had been inducted into the army and his income allegedly was not sufficient to pay notes which fell due monthly, he was not entitled to have payment of all notes becoming due up to three months after his discharge from military service suspended and payees of notes enjoined from declaring notes in default and collecting them, where when suit was instituted no notes were in default, no notice had been given of any attempted collection, and sections 301–310 of this chapter did not contemplate granting of such relief. Application of Roossin, 1941, — Misc. —, 30 N.Y.S.2d 9, affirmed, 1941, 262 App.Div. 1038, 30 N.Y.S 2d 1013.

Alimony.—Where defendant appeared in uniform and exhibited order to report for active army service, on return of motion to punish defendant for contempt in failing to pay alimony, the motion was denied without prejudice to renewal after defendant's discharge from military service, on ground that to adjudge defendant in contempt would be unavailing. Fell v. Fell, 1942, — Misc. —, 38 N.Y.S.2d 381.

A soldier's motion for relief from payment of alimony to his wife was granted to extent of suspending operation of order affected thereby so long as he is in country's service, in view of his lack of other income than his compensation as soldier and existence of public agencies from which soldiers' wives may receive relief. McGlynn v. McGlynn, 1942, 178 Misc. 530, 35 N.Y.S.2d 6.

Separation agreement, claims under.—In action for two monthly payments due under separation agreement the defendant, against whose property a warrant of attachment had been issued, was amply protected by this section. Wolf v. Minton, 1942, — Misc. —, 37 N.Y.S.2d 294.

Support of children.—On motion by defendant to stay for the duration of the war an action to compel him to support two minor children where there was no evidence as to the amount of pay received by officers of defendant's rank in the Army and there was no evidence of the nature, character or extent of property owned by him within the state although alleged value thereof was $5,000, evidence was required in order that court might form an opinion as to whether defendant was able to comply with any order that might be entered. Kelley v. Kelley, 1942, — Misc. —, 38 N.Y.S.2d 344.

On motion by defendant engaged in military service to stay for duration of war an action to compel defendant to support two minor children, evidence showed that defendant had ability to conduct his defense by counsel who had represented defendant in other proceedings concerning the same matter. Kelley v. Kelley, 1942, — Misc. —, 38 N.Y.S.2d 344.

An army man has his national obligations and obligations to support his children and courts when asked to stay an action against an army man for support of his children are called upon to exercise a sound discretion. Kelley v. Kelley, 1942, — Misc. —, 38 N.Y.S.2d 344.

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Decisions construing federal act.—For decisions construing similar provisions of Federal Soldiers' and Sailors' Civil Relief Act of 1940, see 50 U.S.C.A.App. § 523.

§ 307. Continuance of stay, etc.

Any stay of any action, proceeding, attachment, or execution, ordered by any court under the provisions of this act may, except as otherwise provided, be ordered for the period of military service and three months thereafter or any part of such period, and subject to such terms as may be just, whether as to payment in installments of such amounts and at such times as the court may fix or otherwise. Where the person in military service is a codefendant with others the plaintiff may nevertheless, by leave of court, proceed against the others. Added L.1941, c. 686, eff. April 23, 1941.

Unemployment contributions, collection of.—Where employer is a partnership and judgment for collection of unemployment contributions has been stayed because one partner is in military service, proceedings against the other partners may continue by leave of court under this section and similar provision of the federal Soldiers' and Sailors' Civil Relief Act of 1940, § 204, 50 U.S.C.A.App. § 524. May 6, 1941, Op.Atty.Gen.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S.C.A.Appendix, § 524.

§ 308. Statutes of limitations; time of military service not included

The period of military service shall not be included in computing any period now or hereafter to be limited by any law for the bringing of any action by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action shall have accrued prior to or during the period of such service. Added L.1941, c. 686, eff. April 23, 1941.

Refund of unemployment contributions.—Under this section and similar provisions of federal Soldiers' and Sailors' Civil Relief Act of 1940, § 205, 50 U.S.C.A.App. § 525, the period of military service should not be included in the time limit for refunds and credits for unemployment contributions specified in Labor Law, § 523, subd. 3. May 6, 1941, Op.Atty.Gen.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S.C.A.Appendix, § 525.

§ 309. Evictions; restraint

1. No eviction or distress shall be made during the period of military service in respect of any premises for which the agreed rent does not exceed eighty dollars per month, occupied chiefly for dwelling purposes by the wife, children, or other dependents of a person in military service, except upon leave of court granted upon application therefor or granted in any action or proceeding affecting the right of possession.

2. On any such application or in any such action the court may, in its discretion, on its own motion, and shall, on application, unless in the opinion of the court the ability of the tenant to pay the agreed rent is not materially affected by reason of military service, stay the proceedings for not longer than three months, as provided in this act, or it may make such other order as may be just.

3. Any person who shall knowingly take part in any eviction or distress otherwise than as provided in subdivision one of this section, shall be guilty of a misdemeanor, and shall be punishable by imprisonment not to exceed one year or by fine not to exceed one thousand dollars, or both. Added L.1941, c. 686, eff. April 23, 1941.

Payment of rent into court.—Where tenant on termination of three months stay granted pursuant to the Federal Soldiers' and Sailors' Civil Relief Act paid into court the monthly rental for the succeeding month, landlord was not entitled to possession for failure to pay rent during the period of the stay and the prior period upon which landlord's petition

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had been based. Jonda Realty Corporation v. Marabotto, 1942, 178 Misc. 393, 34 N.Y.S.2d 301.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S. C.A.Appendix, § 530.

§ 310. Installment purchases

1. No person who prior to October seventeenth, nineteen hundred forty has received, or whose assignor has received, under a contract for the purchase of real or personal property, or of lease or bailment with a view to purchase of such property, a deposit or installment of the purchase price from a person or from the assignor of a person who, after the date of payment of such deposit or installment, has entered military service, shall exercise any right or option under such contract to rescind or terminate the contract or resume possession of the property for non-payment of any installment falling due during the period of such military service, except by action in a court of competent jurisdiction; provided, that nothing contained in this section shall prevent the modification, termination, or cancellation of any such contract, or prevent the repossession or retention of property purchased or received under such contract, pursuant to a mutual agreement of the parties thereto, or their assignees, if such agreement is executed in writing subsequent to the making of such contract and during or after the period of military service of the person concerned.

2. Any person who shall knowingly resume possession of property which is the subject of this section otherwise than as provided in subdivision one hereof, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year, or by fine not to exceed one thousand dollars, or both.

3. Upon the hearing of such action the court may order the repayment of prior installments or deposits or any part thereof, as a condition of terminating the contract and resuming possession of the property, or may, in its discretion, on its own motion, and shall, except as provided in section three hundred and twelve, on application to it by such person in military service or some person on his behalf, order a stay of proceedings as provided in this act unless, in the opinion of the court, the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service; or it may make such other disposition of the case as may be equitable to conserve the interests of all parties. Added L.1941, c. 686, eff. April 23, 1941.

Automobile.—Under the federal Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C.A.App. § 501 et seq. and this article where assignee of conditional seller sought to replevin automobile from buyer who had been reinducted into United States Army and who was unable to pay balance due under contract or installment payments, and stay of proceedings would work unnecessary hardship on assignee without benefiting buyer, and value of automobile was greater than amount due under contract, to conserve interests of both parties, stay of proceedings was denied and assignee was awarded possession of the automobile and buyer was awarded judgment for the difference between the fair value of automobile and amount due under contract. Associates Discount Corporation v. Armstrong, 1942, — Misc. —, 33 N.Y.S.2d 36.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S. C.A.Appendix, § 531.

§ 311. Mortgages

1. The provisions of this section shall apply only to obligations originating prior to October seventeenth, nineteen hundred forty, and secured by mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service at the commencement of the period of the military service and still so owned by him.

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2. In any proceeding commenced in any court during the period of military service to enforce such obligation arising out of non-payment of any sum thereunder due or out of any other breach of the terms thereof occuring [1] prior to or during the period of such service the court may, after hearing, in its discretion, on its own motion, and shall, except as hereinafter provided in this act, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service.

(a) stay the proceedings as provided in this act; or

(b) make such other disposition of the case as may be equitable to conserve the interests of all parties.

3. No sale under a power of sale or under a judgment entered upon warrant of attorney to confess judgment contained in any such obligation shall be valid if made during the period of military service, or within three months thereafter, unless upon an order of sale previously granted by the court and a return thereto made and approved by the court. Added L.1941, c. 686, eff. April 23, 1941.

[1] So in original. Probably should read "occurring".

Military service, material effect of.—In action to foreclose mortgage, where soldier was only a nominal party having a one sixth interest in a mortgage subordinate to mortgage sought to be foreclosed and no personal judgment was or would be sought against him and soldier had no interest arising out of mortgage sought to be foreclosed, judgment of foreclosure was entered with a finding that ability of soldier to comply with mortgage was not materially affected by reason of his military service. Hunt v. Jacobson, 1942, 178 Misc. 201, 33 N.Y.S.2d 661.

Stays of proceedings to enforce mortgages and trust deeds against persons in military service are granted when defendant's inability to comply with their terms results from military service and such military service has materially affected ability to comply therewith. Hunt v. Jacobson, 1942, 178 Misc. 201, 33 N.Y.S.2d 661.

Stay of foreclosure.—A motion by a sister on behalf of her brother to stay action to foreclose a mortgage on realty owned by the brother, because the brother had been inducted into the military forces of the United States, was authorized by the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C.A.App. § 501 et seq. Brooklyn Trust Co. v. Papa, 1941, — Misc. —, 1942, 33 N.Y.S.2d 57.

Under the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C.A. App. § 501 et seq., a sister moving on behalf of her brother to stay action to foreclose a mortgage on brother's realty because the brother had been inducted into the military forces of the United States was required to show by her papers that receipts from the realty were less than the total proper charges to which the realty was subjected for its upkeep, and where she failed to do so, motion was denied. Brooklyn Trust Co. v. Papa, 1941, — Misc. —, 33 N.Y.S.2d 57.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S. C.A.Appendix, § 532.

§ 312. Repossession proceedings

No court shall stay a proceeding to resume possession of a motor vehicle, tractor, or the accessories of either, or for an order of sale thereof, where said motor vehicle, tractor, or accessories are encumbered by a purchase money mortgage, conditional sales contract, or a lease of bailment with a view to purchase, unless the court shall find that fifty per centum or more of the purchase price of said property has been paid, but in any such proceeding the court may, before entering an order or judgment, require the plaintiff to file a bond, approved by the court, conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any such judgment or order should the judgment or order be set aside in whole or in part. Added L.1941, c. 686, eff. April 23, 1941.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S. C.A.Appendix, § 533.

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§ 313. Taxes; taxes on real property, etc.

1. The provisions of this section shall apply when any taxes or assessments, whether general or special, falling due during the period of military service in respect of real property owned and occupied for dwelling, agricultural, or business purposes by a person in military service, or his dependents, at the commencement of his period of military service and still so occupied by his dependents or employees, are not paid.

2. When any person in military service, or any person in his behalf, shall file with the collector of taxes, or other officer whose duty it is to enforce the collection of taxes or assessments, an affidavit showing

(a) that a tax or assessment has been assessed upon property which is the subject of this section,

(b) that such tax or assessment is unpaid, and

(c) that by reason of such military service the ability of such person to pay such tax or assessment is materially affected, no sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon an application made therefor by such collector or other officer. The court thereupon may stay such proceedings or such sale, as provided in this act, for a period extending not more than six months after the termination of the period of military service of such person.

3. When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service, but in no case later than six months after the date when this act ceases to be in force; but this shall not be taken to shorten any period, now or hereafter provided by the laws of the state, or any political subdivision thereof, for such redemption.

4. Whenever any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest until paid at the rate of six per centum per annum, and no other penalty or interest shall be incurred by reason of such nonpayment. Any lien for such unpaid taxes or assessment shall also include such interest thereon. Added L.1941, c. 686, eff. April 23, 1941.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S. C.A.Appendix, § 560.

§ 314. Taxes; income taxes

The collection from any person in the military service of any tax on the income of such person, whether falling due prior to or during his period of military service, shall be deferred for a period extending not more than six months after the termination of his period of military service, if such person's ability to pay such tax is materially impaired by reason of such service. No interest on any amount of tax, collection of which is deferred for any period under this section, shall accrue for such period of deferment, by reason of such non-payment. The running of any statute of limitations against collection of such tax, by distraint or otherwise, shall be suspended for the period of military service, of any individual, the collection of whose tax is deferred under this section, and for an additional period of nine months beginning with the day following period of military service. Added L.1941, c. 686, eff. April 23, 1941.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S. C.A.Appendix, § 573.

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§ 315. Policies of insurance; policies not to lapse or be forfeited

1. No policy which has not lapsed for the nonpayment of premium before the commencement of the period of military service of the insured, and which has been brought within the benefits of the federal "soldiers' and sailors' civil relief act"[1] shall lapse or be forfeited for the nonpayment of premium during the period of such service, or during one year after the expiration of such period, provided that in no case shall this prohibition extend for more than one year after the date when this act ceases to be in force.

2. For the purposes of this section, the term "policy" shall include any contract of life insurance on the level premium or legal reserve plan. It shall also include any benefit in the nature of life insurance arising out of membership in any fraternal or beneficial association. In no case, however, shall the term "policy" include insurance exceeding a total face value of five thousand dollars whether in one or more policies or in one or more companies. The term "premium" shall include membership dues or assessments in such association, and the date of issuance of policy as herein limited shall refer to the date of admission to membership in such association; the term "insured" shall include any person who is the holder of a policy as defined in this section; the term "insurer" shall include any corporation, partnership, or other form of association which secures or provides insurance under any policy as defined herein. Added L.1941, c. 686; amended L.1942, c. 216, § 14, eff. March 29, 1942.

[1] 50 U.S.C.A.App. § 501 et seq.

Subd. 1 was so numbered and amended by L.1942, c. 216, § 14, eff. March 29, 1942. L.1942 substituted "than" for "that" at end of section on recommendation of the Law Revision Commission, see 1942 Leg.Doc.No.65(N); 1942 Report, Recommendations and Studies, pp. —.

§ 316. Reemployment in private industry

1. In the case of any person who, in order to perform military training and service, as herein defined, has left or leaves a position, other than a temporary position, in the employ of any employer, and who

(a) receives his certificate of completion of training and service, as set forth in the selective training and service act of nineteen hundred forty,[1] and the national guard and reserve officers' mobilization act[2];

(b) is still qualified to perform the duties of such position; and

(c) makes application for reemployment within forty days after he is relieved from such training and service, if such position was in the employ of a private employer, such employer shall restore such person to such position, or to a position of like seniority, status and pay, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

2. Any person who is restored to a position in accordance with the provisions of this section, shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces of the United States, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause, within one year after such restoration.

3. In case any private employer fails or refuses to comply with the provisions of this section, the supreme court of the state within the county in which such private employer maintains a place of business, shall have power, upon the filing of a motion, petition or other appropriate pleading, by the person entitled to the benefits of such provisions, to specifically require such employer to comply with such provisions, and may, as an incident thereto, compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action.

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The court shall order a speedy hearing in any such case, and shall advance it on the calendar. Any person claiming to be entitled to the benefits of the provisions of this section may appear and be represented by counsel, or, upon application to the attorney general of the state, may request that the attorney general appear and act on his behalf. If the attorney general is reasonably satisfied that the person so applying is entitled to such benefits, he shall appear and act as attorney for such person in the amicable adjustment of the claim, or in the filing of any motion, petition or other appropriate pleading and the prosecution thereof. In the hearing and determination of such applications under this section no fees or court costs shall be assessed against a person so applying for such benefits. Added L.1941, c. 686, eff. April 23, 1941.

[1] 50 U.S.C.A.App. § 301 et seq.
[2] 50 U.S.C.A.App. § 401 et seq.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S. C.A.Appendix, §§ 540–554.

§ 317. Evasive transfers of interest

Where in any proceeding to enforce a civil right in any court it is made to appear to the satisfaction of the court that any interest, property, or contract has since the date of the approval of this act been transferred or acquired with intent to delay the just enforcement of such right by taking advantage of this act, the court shall enter such judgment or make such order as might lawfully be entered or made, the provisions of this act to the contrary notwithstanding. Added L. 1941, c. 686, eff. April 23, 1941.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S. C.A.Appendix, § 580.

§ 317-a. Effect of death of donor of power of attorney

1. A power of attorney to which this section applies shall not be deemed ineffective, by reason solely of the death of the donor of the power, as to a third party dealing in good faith with the donee of the power, provided that the third party, at the time of such dealing, had no knowledge or actual notice of the death of the donor.

A donee of a power of attorney to which this section applies, who acts in good faith pursuant to such power, shall not be liable for such act to a third party or to the representatives of the donor by reason solely of the death of the donor, provided that at the time of such act he had no knowledge or actual notice of the death of the donor.

2. This section shall apply to a power of attorney contained in an instrument in writing executed by a resident or a nonresident within or without the state on or after October seventeenth, nineteen hundred forty, but not later than six months after the termination of war by a treaty of peace proclaimed by the President of the United States, either

(a) by a person in military service, or by a person who after executing such power of attorney enters military service; or

(b) by a person who has departed from the territory of the United States included in the forty-eight states and the District of Columbia, or who, after the execution of the power, shall depart from the territory of the United States included in the forty-eight states and the District of Columbia, in connection with any work pertaining to or connected with the prosecution of the war, by permission, assignment or direction of any department or official of the United States government.

3. The provisions contained in subdivision one hereof shall not be applicable to acts done by the donee pursuant to the power of attorney later than six months after the termination of war by a treaty of peace proclaimed by the President of the United States.

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4. An instrument containing a power of attorney to which this section applies shall be signed by the party executing it, and shall be acknowledged or proved in the manner prescribed by law to entitle conveyances of real property to be recorded. Added L.1943, c. 534, § 1, eff. April 16, 1943.

Retroactive effect. Laws 1943, c. 534, § 2, provided: "This act shall not apply to any power of attorney, the donor of which died before this act shall take effect."

Note of Commission.—This section was recommended by the Law Revision Commission.

"Its purpose is to make effective, with proper safeguards, written powers of attorney executed by persons in military service, or by civilians who go out of the country on business connected with the prosecution of the war." 1943 Leg.Doc. No. 65(N); 1943 Report, Recommendations and Studies, pp. ——.

§ 318. Certificates as to service

1. In any proceeding under this act a certificate signed by the adjutant general of the army as to persons in the army or in any branch of the United States service while serving pursuant to law with the army of the United States, signed by the chief of the bureau of navigation of the navy department as to persons in the United States service while serving pursuant to law with the United States navy, and signed by the major general commandant, United States marine corps, as to persons in the marine corps, or in any other branch of the United States service while serving pursuant to law with the marine corps, or signed by an officer designated by any of them, respectively, for the purpose, shall when produced be prima facie evidence as to any of the following facts stated in such certificate: That a person named has not been, or is, or has been in military service; the time when and the place where such person entered military service, his residence at that time, and the rank, branch, and unit of such service that he entered, the dates within which he was in military service, the monthly pay received by such person at the date of issuing the certificate, the time when and the place where such person died in or was discharged from such service.

2. It is the duty of the foregoing officers to furnish such certificate on application, and any such certificate when purporting to be signed by any one of such officers or by any person purporting upon the face of the certificates to have been so authorized shall be prima facie evidence of its contents and of the authority of the signer to issue the same.

3. Where a person in military service has been reported missing he shall be presumed to continue in the service until accounted for, and no period herein limited which begins or ends with the death of such person shall begin or end until the death of such person is in fact reported to or found by the department of war or navy, or any court or board thereof, or until such death is found by a court of competent jurisdiction: provided, that no period herein limited which begins or ends with the death of such person shall be extended beyond a period of six months after the time when this act ceases to be in force. Added L.1941, c. 686, eff. April 23, 1941.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S. C.A.Appendix, § 581.

§ 319. Interlocutory orders

Any interlocutory order made by any court under the provisions of this act may, upon the court's own motion or otherwise, be revoked, modified, or extended by it upon such notice to the parties affected as it may require. Added L.1941, c. 686, eff. April 23, 1941.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S. C.A.Appendix, § 582.

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§ 320. Separability

If any clause, sentence, paragraph, or part of this article or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this article, and the application thereof to other person or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this article would have been adopted had such invalid provisions not been included. Added L.1941, c. 686, eff. April 23, 1941.

§ 321. Inconsistent provisions in other acts

In so far as the provisions of this act are inconsistent with the provisions of any other act, general or special, or of any local law, the provisions of this act shall be controlling. Added L. 1941, c. 686, eff. April 23, 1941.

§ 322. Duration of the emergency

This act shall remain in force and effect until July first, nineteen hundred forty-two; provided, that should the United States be then engaged in a war, this act shall remain in force until such war is terminated by a treaty of peace proclaimed by the president, and for six months thereafter; provided further, that wherever in any section or provision of this act a proceeding, remedy, privilege, stay, limitation, accounting or other transaction has been authorized or provided with respect to military service performed prior to the date herein fixed for the termination of this act, such section or provision shall be deemed to continue in full force and effect so long as may be necessary for the exercise or enjoyment of such proceeding, remedy, privilege, stay, limitation, accounting or other transaction. Added L.1941, c. 686, eff. April 23, 1941.

Decisions construing federal act.—For decisions construing similar provisions of the Federal Soldiers' and Sailors' Civil Relief Act, see 50 U.S. C.A.Appendix, § 584.

§ 323. Short title

This article shall be known and may be cited and referred to as the "New York Soldiers' and Sailors' Civil Relief Act." Added L.1941, c. 686, eff. April 23, 1941.

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